

In the name of God the Beneficent the Merciful ...

The Constitutional and Legal ROLE OF THE UMMA

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لَا إِلَهَ إِلَّا اللَّهُ - مُحَمَّدٌ رَسُولُ اللَّهِ

*There is nothing worthy of worship save God.
Muhammad is God's messenger*



This concise work brings into sharp focus the role of the Muslim People in any valid shaping of Muslim affairs today. Fourteen centuries of Muslim history have been so lucidly described that one cannot fail to be struck with the essential unity of the Muslim historical experience even when considering its regional and other variations.

This work gives a clear understanding of the essential constitutional and legal requirements confronting Muslims today—as well as of the interaction between past theory and practice and the merging of history into current affairs.

إِنَّ اللَّهَ لَا يَغَيِّرُ مَا بِقَوْمٍ
حَتَّى يَغَيِّرُوا مَا بِأَنْفُسِهِمْ

(١٣: ١٠)

Truly God does not change the
condition of a people until they
change themselves

(13: 10)

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INTRODUCTION

Establishing an Islamic Order, to carry any conviction, must mean implementing Islamic law. This has two distinct aspects. First : the appropriate method for understanding the law. Second : the specific provisions of the law itself. The first concerns the theory of Islamic jurisprudence (and its constitutional implications) while the second concerns applied or substantive law. A great deal of attention is given today on determining the specific provisions without being at all clear about the principles of Islamic jurisprudence and the resultant constitutional theory. This is incongruous in an ideological state where practice should flow from principles.

How then are these principles and this theory to be comprehended? Partly of course by reference to books on *usul al-fiqh* or Islamic jurisprudence. But if our comprehension is to have any validity we must understand how the historic Muslim community has applied these principles in practice in the past. But our past itself is divisible into about seven distinct Eras each with its characteristics. The First Era (610-632 CE) begins with the First Revelation of the Holy Qur'an at the Cave of Hira and ends with the death of the Prophet (o.w.b.p.). The Second Era (632-661) is the time of the first four "Rightly-directed" Republican Caliphs (*al-khulafa' al-rashidun*). The Third Era (661-750-1258) is that of the Monarchical Umayyad and Abbasid caliphates. The Fourth Era (1258-ca.1500) is the Post-Caliphal Interregnum. The Fifth Era (ca. 1500-ca.1800) is that of Imperial states. The Sixth Era (ca. 1800-ca.1925) is of Imperial Decline and Foreign

Colonial Domination. Finally, the Seventh Era (ca. 1925 onwards) is marked by increasingly republican independent states, still groping internally for viable state structures and externally seeking a new basis for inter-Muslim relationships while they deal with major powers and lesser nation-states in an increasingly inter-related world.

Some people concentrate on the First and Second Eras and ignore all later developments as an irrelevant aberration from the ideal. Others go back to the Fifth Era seeking to pick up the threads of "genuine" Muslim history at the point where they were abruptly snapped by foreign conquest. Yet others pick and choose at random from this long history without bothering to understand the milieu in which particular developments took place. Often enough there is little respect for the actual facts of history in this search for a suitable ideal prototype from the past which can be applied today and without explaining how such an ideal society could ever decline. The laws of cause and effect are neglected. We are so anxious to relive without change the glories and achievements of the past or a portion of it that we run the risk of committing again the very mistakes which led to our decline to our present position from those earlier glories.

Understanding our past serves, therefore, many essential purposes and its salient features become capable of comprehension provided we closely follow the changing interaction between a number of basic themes: *shari'a*, i. e. the Divinely-revealed Law of the Qur'an and the *sunna* of the Prophet; *fiqh*, i. e. the understanding of *shari'a* by human beings as this understanding evolved and was systematized; *khilafa* or the nature of the executive head of state and/or identification of the delegated trustee(s) on earth of God's sovereignty; *sultans* or *muluk* (the monarchs) of the post-caliphal eras; the *ulama'*/*fuqaha'* or "experts" as they developed into an identifiable body with widely varying degrees of official or popular support or of institutional form at different stages; the place of *shura* or "mutual" consultation; and, finally, the *Umma* or Muslim community as a whole or within a particular state. Apart from the First Era, this requires examination in three parts: the Relevant Events, Constitutional Evolution and Legal Developments.

FIRST ERA : THE ADVENT OF SHARI'A

(610-632 CE)

Certain important general considerations should be pointed out. First, although the advent of *shari'a* (and, therefore, Islamic law) begins from about 610, Islamic constitutional history properly dates from 622, the year of the Hijra from Mekka to Medina and the setting up of the Islamic city-state in the latter place. It is evidence of the importance of this socio-political dimension that the Islamic calendar begins not from 610 but from 622. The Mekkan period (pre-622) may be said to emphasize the personal aspects of Islam while the Medinese (post-622) places greater emphasis on the socio-political. It might be argued that this shows that without the prior personal basis, it is not possible to erect the socio-political structure. Numerous arguments can be, and are, adduced on both sides as to which (personal or social) has greater importance, or priority, today. The difficulty of resolving this question cannot be made an excuse, in any case, for inaction on both fronts. On the contrary, both personal and socio-political aspects have to be tackled together or separately, as and when opportunity presents itself.

Second, our main access to knowledge of the *sunna* ("way") of the Prophet is through *ahadith* i. e. the "accounts" of the Prophet's *sunna*. *Sahifa* were reportedly compiled by some companions of the Prophet but our chief source are the *Sihah Sitta* (the "six sound" compilations). The earliest of these six (of al-Bukhari d. 256 AH/869 CE) was compiled about two centuries after the events it records—a long time lapse which has to be taken into account when evaluating the accuracy of any individual *hadith* as also the fact that al-Bukhari selected 7,275 out of 600,000 known to him after testing them accord-

ing to his canons of criticism. Similar proportions of acceptance and rejection are true of the other five compilations which come later. This becomes very significant when a discrepancy is apparent between the Qur'an and any particular *hadith*, as the Qur'an is an intact revelation from the time of the Prophet himself.

Third, direct rule and mutual consultation was possible as long as the Islamic state was confined to Medina and its outlying areas, but during the last few years of the Prophet's life, the whole of the Arabian peninsula became Muslim and the distances between e. g. Medina and Yemen or Bahrain required the delegation of some authority to governors and agents. This in turn initiated a certain "law-interpreting" process on the part of provincial governors which was entirely approved of by the Prophet as is shown by the well-known reply of Mu'adh b. Jabal when questioned by the Prophet as to how he would decide matters as Governor of Yemen. The governor-designate replied that he would first have recourse to the Qur'an, then to the *sunna* or practice of the Prophet and then, if still requiring guidance, he would exercise *ijtihad*. The Prophet praised this answer.

This illustrates the fourth point, that Islamic legislative activity is of two types : law-"making" and law-"interpreting". The former is the gradual unfolding of *shari'a* in the First Era, through the successive revelations of portions of the Qur'an and its continuous exemplification in *sunna* right up to 632. The latter is *ijtihad* (the exertion to understand the principles of *shari'a*, their meaning and application for a given situation. Such *ijtihad* had begun e. g. by Mu'adh b. Jabal, in the First Era and the Prophet's desire that Muslims should never shrink from this task is shown in the *hadith* which states that if one who exercises *ijtihad* is wrong he receives one reward and if he is right he receives two rewards.

Fifth, the Constitution of Medina, framed soon after the Hijra, and subsequent documents, lay down certain rules for Muslims and their relationship with non-Muslims. For Muslims, now bound by allegiance to the *shari'a* of Islam they were joined together in the Islamic *Umma* transcending pre-Islamic tribal affiliations and

possessing a continuous legal personality. As for their relationship with non-Muslims, this was now placed on a workable and mutually acceptable basis through negotiations and not by any unilateral *diktat* of one side over the other. It is precisely this quality of being negotiated that gave this relationship its strength and provides an enduring principle for Inter-religious relations today.

SECOND ERA : THE REPUBLICAN CALIPHATE (632-661)

Relevant Events

The legal continuity of the *Umma* and the Islamic state, notwithstanding the death of the Prophet, was one of the first matters which was asserted during the time of the first *khalifa* (lit. "successor" to the Prophet in his temporal duties) Abu Bakr. Thereafter from the Arabian peninsula the Islamic state spread rapidly outwards until by the end of the Orthodox or Rightly-directed caliphate, it had absorbed Syria, Iraq, Egypt, Iran, present-day Libya, reaching from the Amu Darya in central Asia to below Aswan in Africa.

Constitutional

We describe the first four caliphs as *rashid* or "rightly-directed" and it is worth considering in some depth why they are so described, in contradistinction to the subsequent Umayyads and Abbasids. First, and foremost, because the caliph or executive head of state himself recognized that he was subordinate to the law (*shari'a*). The tone was set by Abu Bakr when assuming office. In his first speech he asked for obedience only as long as he himself obeyed and carried out the laws of God and His Prophet and asserted that he had no right to obedience if he neglected these laws. In modern terms, the executive was subordinate to the law.

Second, the very manner by which these rightly-directed caliphs became such, rested on the approval of the *Umma*. This general *baya* or oath of allegiance was essentially confined to those in Medina and its vicinity in an age when referendums and general elections were unknown. It is also true that this community approval was preceded by an intermediate stage which varied for these four caliphs. Thus,

for the first (Abu Bakr) and the last (Ali b. Abi Talib) there was a preliminary "recommendation" by a group of elders. For the second (Umar b. al-Khattab) there was a nomination by his predecessor, ratified by a group of elders and for the third (Uthman b. Affan) there was a prior election by a six-man Electoral College nominated by his predecessor.

These elders were no mere self-perpetuating oligarchy. From pre-Islamic times there was a strong democratic basis for choosing the head (*shaikh*) of a tribe. Age and lineage were secondary to the capability of a person as determined by the tribe as a whole. Its very survival depended upon possessing a competent leader enjoying general support. This was necessary in inter-tribal warfare and for safely crossing the harsh unforgiving desert. In such elemental conditions incompetent leadership meant death for the whole tribe.

Third, this Era was "rightly-directed" because it was government by *mutual* consultation as commanded by the Qur'an at 42 : 38. The very name of this chapter of the Holy Book (*al-Shura*) comes from this particular verse and shows its importance. Again, it is worth considering more closely what "mutual" discussion means. This is essentially decision-making after discussion has led to general agreement which bears no relation to a dictatorship in which the leader condescends to listen to the purely advisory opinions of the people. There is, therefore, a crucial difference between "consultation" and "mutual consultation".

A prolific source of misunderstanding about the Islamic concept of leadership—as exemplified in the Rightly-directed Era—arises because elective systems can result in various types of leaders. At one extreme is the election of a leader by democratic means (and thus legitimized) who, after being so elected, considers that he now has a mandate to rule autocratically without any obligation to continuously refer back to public opinion or seek a periodic renewal of his mandate. A leading example of this is Hitler's rise to power and the manner he used this power thereafter. There are indications that a similar process nearly took place in Pakistan in the recent past. These are secular examples but history has many examples of

such a ruler thinking that he has "God on his side" and proceeding to try and force everyone into a straightjacket with ruthless ferocity.

At the other extreme, of rulers chosen by the elective process, is the one who suppresses his own values (if he has any) and analyzes through opinion polls or intelligence reports what various sections of the people want. He then constructs a manifesto or political programme based on an amoral balancing of these different popular impulses seeking to attract the largest mass support. This results in aiming at the lowest common denominator. He is blind to Mirabeau's observation: "The mob is not the people." This debasement of the democratic system can be seen increasingly in England and the United States where governments shrink from doing what is right, even essential in the struggle for survival, in their anxiety to please rather than to truly serve. They humour powerful lobbies of sectional interests pursuing narrow goals irrespective of the general good.

The same tendency exists with many political leaders and parties in Pakistan today. In their anxiety to offend no one, they may end up exasperating everyone. Each seems to be convinced that they can win the next election if only he "plays his cards right". None is prepared to contemplate five years in the opposition as the price for standing for certain identifiable principles and programmes. Yet this is precisely the kind of leadership which the country requires. Churchill's years in the political wilderness rather than acquiesce in the policy of appeasement to Nazi Germany provides an example. So does De Gaulle who abruptly left the leadership of France when he found that the French were not yet ready to accept the basic constitutional changes he considered necessary and which they eventually accepted from him when he returned to power in 1958. He also displayed this same understanding of the true requirements of leadership in conceding Algerian independence at a time when the myth of Algeria being French was widely and strongly held in metropolitan France. Jinnah's leadership of Muslims both before and after the achievement of Pakistan also exhibited those same qualities.

Thus between the two extremes of leaders chosen by the elective process, there is a middle ground not easily defined where the execu-

tive leads and is not led and yet he leads by consent, not merely in vague general terms given at the beginning of his tenure, but a consent given (or withheld) at each stage and on specific issues. It is this middle type of democratic leadership which characterizes the Era of the rightly-directed Republican Caliphate. Shibli Numani, in his biography of the second caliph entitled *al-Faruq*, when discussing the nature of the state in his time, describes the consultative process as being of two types. A smaller assembly which met in the Prophet's mosque whenever summoned by a public crier which, in Shibli's words, operated as follows: "Whenever an important question came up for decision, the Consultative Assembly was called, and no question was decided without free debate and without the consent of the majority." (Italics added.) For major issues, however, a larger General Assembly was convened and on one such occasion (according to Abu Yusuf in his *Kitab al-Kharaj*) Umar addressed the gathering as follows: "I have given you the trouble to assemble here in order that you might participate in the burdens put upon me in respect of the state, for I am only one from among yourselves, and I do not desire that you should follow my wishes."

There was, therefore, a smaller (mutual) Consultative Assembly meeting almost every day and a larger General Assembly for major issues. Translated into modern terms the former was something more than a cabinet with collective responsibility and less than a legislative assembly or parliament. The latter seems to have been more than a parliament but not quite a referendum. Central-provincial relations were based on the *khalifa* with his (mutual) Consultative Assembly choosing the right man as governor. Thereafter central-provincial relations were kept in harmony by frequent visits both ways. Additionally, meetings with provincial governors at the time of *hajj* enabled general, agreed policies to be set up. There was in this the embryo of a federal system.

It can be seen that it is not easy to assert that this was a presidential or parliamentary system (or a combination) although it was clearly democratic and not autocratic. This question requires separate treatment in depth which should be approached in two ways. First, to understand what the rightly-directed caliphs did in the

light of their own specific situation and institutional possibilities and limitations and, second, to try to assess what they would have done if they were confronted with the problems and possibilities of a state like contemporary Pakistan. One could, of course, widen this to the question of the Muslim world as a whole as it is today, but then we would be moving from the realm of immediately realizable possibilities to a more distant vision.

Legal

In the Era of the Republican Caliphate, the distinction between *shari'a* and *fiqh* was not clearly formulated and, to a large extent, the Qur'anic understanding and *sunna* pattern of the Prophet's time was continued literally. Nevertheless, what later jurists would have classified as *ijtihad* (which had already begun in the Prophet's Era as noted earlier) continued in order to meet new situations not previously encountered. Equally striking is the fact that in some cases this "*ijtihad*" actually altered previous rulings. Thus, in the time of the Prophet and Abu Bakr no *zakat* was levied upon horses. But after Syria became Muslim during Umar's time, there was an abundance of horses and *zakat* was levied upon horses as well. It appears that Umar and the Assembly of the *Umma* reasoned that the explanation for the original *zakat* exemption on horses had been to encourage their breeding in the Arabian peninsula where they were scarce, which no longer applied after Syria became Muslim with its abundance of horses.

Similarly a *talaq* pronounced thrice without an interval of time between pronouncements (the *talaq bida'* or "innovatory divorce") was made binding from Umar's time alongside the *talaq ahsan* (or "good divorce"). It would be difficult to find a Qur'anic basis for this change but not merely was this accepted generally but it has continued as an enforceable rule of Islamic law, virtually unchallenged until recent times in most schools. Of course the rationale for this enforcement of *talaq bida'* can be found in the misuse being made of the rules regarding the pronouncement of divorce and the confusion arising as to whether a divorce had become irrevocable or not. The enduring lesson in this, however, is the fact that a dynamic and

progressive interpretation of Islamic law is only possible when it takes place through a process of mutual consultation and carries, thereby, the approval of the *Umma* along with it.

THIRD ERA : THE MONARCHICAL CALIPHATE (661-750-1258)

Relevant Events

These six hundred years are divisible into three periods : the Umayyad (661-750), the Early Abbasid (750-945), and the Later Abbasid (945-1258)—the first being of continuing territorial and cultural expansion, the second of territorial contraction of caliphal authority but also of Muslim cultural consolidation, while in the third period there was the political subjection of the caliph himself at Baghdad while internal Muslim cross-currents engaged in military and political struggle and in ideological polemics seeking coherent self-expression—all within the new world of Islam.

During the Umayyad period based on Damascus instead of Medina (which ended in 133 AH/750 CE) the Islamic state reached southern France in western Europe, the lower Indus river in southern Asia and the river Oxus in central Asia. Except for outlying fringes, the whole of this vast area became increasingly Muslim under one caliphal centre at Damascus. But from the very beginning of the Early Abbasid period there was steady erosion of central control. Using present-day descriptions of the areas concerned, in the west Muslim Spain and Portugal broke away from central control as early as 756, followed by Morocco and western Algeria (789), eastern Algeria, Tunisia and western Libya (800) and eastern Libya and Egypt (868). In the north and east, Turkestan broke away about 820, Khurasan and Afghanistan (869/872), the rest of Iran (867), southern Pakistan (871), and Transcaucasia (890). Even Syria was controlled by the Tulunids after 877 and in Iraq there were the Zanj revolts between 870 and 883.

In the Arabian peninsula, autonomous states arose from 820, notably in Yemen and Oman, while a Qaramita "republic" based on

Bahrain sacked Kufa, occupied Oman and in 929 sacked Mekka itself, carrying off the Black Stone for twenty years until it was returned at the request of the Fatimid caliph al-Mansur who had by then assumed guardianship of the Holy Places in the Hijaz and Palestine.

Indeed, even the Abbasid Caliph's nominal suzerainty over the entire Muslim world was challenged by two rival caliphates. One when Abd al-Rahman III al-Nasir at Cordova proclaimed in 928 a separate Spanish Umayyad caliphate and the other when Ubaid Allah al-Mahdi proclaimed in 909 a separate Fatimid caliphate at al-Mahdiyya in present-day Tunisia. Otherwise most of the new regional states continued to owe nominal allegiance to, and seek investiture from, the Abbasid caliph at Baghdad in whose name the *khutba* was recited in mosques under their control, tending the *baya* as Sunnis to the Baghdad caliph.

The Later Abbasid period begins in 945, however, with a fundamental change when Baghdad itself was occupied by a military group of Iranian Shi'i Buyids where they remained in total actual control until 1055 when they were replaced by Turkish Sunni Seljuks who wielded identical powers until 1194. With the assistance of the Khwarazm-Shahs, the caliphs regained their independence for the next sixty-four years until the Abbasids disappeared in the Mongol eruption and Sack of Baghdad in 1258. One million six hundred thousand of Baghdad's two million inhabitants perished, libraries and colleges were burnt and obliterated and, apart from one or two fugitives who escaped to Cairo (then under the Mamluks), the Abbasids were exterminated. The same Mamluks finally halted the Mongols at Ayn Jalut in northern Palestine in 1260 under Sultan Baybars.

Between 945 and 1194, the position of the puppet Abbasid caliph was identical in the case of both Buyids and Seljuks. Actual power was in the hands of the Buyid or Seljuk *amir al-umara'* or military commander-in-chief who deposed and appointed caliphs without hesitation while obsequiously paying all outward marks of respect to the caliph of the moment. For a time the Buyids contemplated assuming the role of caliph but decided it was politically more advisable to rule through a puppet Sunni caliph in view of popular sentiment. Nor was there any difference in Seljuk behaviour although

they entered Baghdad in 1055 with the avowed object of "freeing" the caliph from Buyid captivity.

It can be seen how internal Muslim ideological and theological differences were playing their part in these events and this was equally true with regard to the rival caliphates—not so much the distant Spanish Umayyads who in any case were later replaced by the al-Murabitun (Almoravids) based on Marrakesh who tendered the *baya* to the Abbasids from 1061—but more urgently the Fatimids who conquered Cairo in 969 and then established control of Palestine, greater Syria and the Hijaz. Indeed for many years the *khutba* in Mekka was recited in their name and, for a brief moment in 1059, Baghdad itself was held in the name of the Fatimid caliph al-Mustansir.

What is remarkable is the fact that, notwithstanding the total eclipse of actual Abbasid power in 945 and the loss of the Holy places in the Hijaz to the Fatimids, powerful regional rulers continued to seek investiture from, and tender oaths of allegiance to, the Baghdad Abbasid caliph. Thus Mahmud Ghaznavi "Yamin al-Dawla" (998-1030) tendered the *baya* in 999. By the end of his rule, his area of control extended as far as Hamadan at the expense of the Buyids. Similarly in the Far West, as noted, the real founder of al-Murabitun power, Yusuf b. Tashufin (1061-1106) sought formal investiture and legality from the Abbasid caliph. From Marrakesh, his Moroccan capital, he established control over Senegal, Morocco, western Algeria and most of Muslim Spain, fragmented at that time into quarrelling Muslim principalities. Equally striking, the Kurd Salah al-Din Ayyubi (1169-1193) never claimed to be more than a lieutenant of the caliph as he ended Fatimid rule in Egypt, gained control of Palestine, Syria, the Hijaz and Yemen and (uniting Kurds, Turks and Arabs) recovered Jerusalem from the Christians in 1187, expelling the Crusaders from all except a few coastal enclaves in his lifetime. Similarly, the Delhi sultans from the time of Shams al-Din Iltutmish (1211-1236) sought investiture from the Abbasid caliph.

Constitutional

Against this background it becomes possible to understand the constitutional developments which took place during this Third Era.

The very first effect of the Umayyad transfer of capital from Medina to Damascus was to snap the link between the community (*Umma*) and the executive (*khalifa*) which had existed during the Era of the Republican Caliphate through the institution of *shura* and mutual consultation at Medina. Moreover the executive itself was now virtually a semi-hereditary affair even if the outward form of election and the *baya* were preserved as empty rituals. Then the very speed of Muslim expansion and need for consolidation obliged the Umayyads to utilize pre-Islamic administrative structures and practices in newly-conquered areas. Executive decisions from the capital or provincial governors were often ad hoc and based on a pragmatic assessment of immediate requirements. The ruler had little time (and sometimes little inclination) to ascertain the *shari'a* position. Executive prerogative began to supplant the law.

It was partly as a protest against these developments that the Abbasids were able to generate support in overthrowing the Umayyads in 750 and transferring the capital to Baghdad. Great Islamic expectations were raised by the triumph of the Abbasids. Writings in the Early Abbasid period reflect the hope that a new Islamic dispensation could be achieved through the caliph himself. Thus Ibn al-Muqaffa (d.756) notably in his *Risala fi'l-sahaba* exhorted the caliph al-Mansur to legislate for the "approved good" in consonance with the spirit of *shari'a*. Much the same exhortatory approach was adopted by Abu Yusuf (d. 798) in his *Kitab al-Kharaj* when urging the caliph Harun al-Rashid to use his powers as a trust to rule justly in accordance with the commands of God. In response, there was a greater official deference paid to those with Islamic knowledge.

But in Baghdad, Sassanian and Byzantine influences grew ever-stronger in the administration and the development of court ceremonial. The atmosphere became increasingly aristocratic and hierarchic with a remote monarch at the apex holding arbitrary powers of life and death. This tendency to strengthen caliphal autocracy grew as a response to meeting the challenges in the provinces and in rival caliphates we have noted earlier. There was an increasing emphasis on the might and majesty of the *khalifa* and his

Divinely-authorized status as "the rope stretched between God and His creatures" and the "shadow of God upon earth". As often happens, high-sounding and increasingly unsubstantiated assertions of absolute power in theory were vainly used as compensation in inverse proportion to the actual authority possessed.

But in the Later Abbasid period of caliphal captivity from 945, the success of the Fatimids from Cairo and the Buyids in Baghdad itself generated constitutional writings of a different nature. For one thing, they were no longer humble exhortations to the ruler to act rightly, bereft as he now was of any power whatsoever. They were primarily directed at the intelligentsia of the age to cure any doubts they might be developing regarding the legitimacy of the Abbasids in the face of the threats to their continuance, even nominally. In turn, the intelligentsia were able to strengthen the feelings of the Community to an extent that made any idea of removing the Abbasids from the caliphate a politically dangerous move.

Thus these new constitutional writings sought two main objects. First, to justify the Sunni theory of *ikhtiyar* (choice) against the opposing view of *tashkhis* (identification) as the proper basis for establishing the leader of the Community. Second, to provide some legalized working basis between the capital and the autonomous rulers who tendered loyalty to the Abbasid caliph notwithstanding the fact that these regional rulers were, or were derived from, an original rebellion against central authority.

The consolidation of the theoretical legitimacy of the Abbasids (and their predecessors) was made by al-Baqillani (d. 1013). As we shall see in considering the evolution of Islamic jurisprudence and legal theory below, the doctrine of *ijma'* (consensus) had assumed a highly important position in legal theory about the year 800. Al-Baqillani firmly related this doctrine to constitutional issues in his works (notably *al-Tamhid* and *Ijma' ahl al-Medina*) maintaining that by the *baya* of the limited assembly of *ahl al-hall wa'l-'aqd* ("those who loosen and bind") and the general *baya* of the Community (particularly at Medina) there was an *ijma'* or "protected from error" consensus of the Community on the choice of caliph which was the basis

of the legitimacy of all caliphs from Abu Bakr down to the incumbent caliph of al-Baqillani's time, notwithstanding adverse comments that might be made about the conduct of individual caliphs in this long line. He also maintained, however, that a caliph could be deposed if he proved to be a wrong-doer but failed to indicate (like virtually all subsequent writers) how this deposition might be constitutionally effected.

By the time of al-Mawardi (d. 1058) the Buyids were weakened by internal dissensions and the major challenge was from the Fatimids coming ever closer to Baghdad. There also was now the prospect of Ghaznavid assistance from the east. Al-Mawardi, therefore, tried (in his *al-Ahkam al-Sultaniyya*) to provide a legitimized basis for rescuing the Abbasid caliph. Internally he held that the Buyid *amir al-umara'* was acceptable provided that those who held the caliph "under restraint" otherwise conform to *shari'a* and act justly and he spelt out an apportionment of duties which left certain administrative authority with the caliph. If the Buyids did not, then the caliph should seek help against them. But who was to give this help? Clearly it could only come from what was strictly speaking the rebellious governor or *amir* of a province such as the Ghaznavids. This *imarat al-istila'* (rule by forcible seizure) was to be validated by the caliph for an outlying province provided the now autonomous ex-governor preserves the dignity of the caliphate, tenders the *baya* and undertakes to govern by *shari'a*. This legitimization of the use of forcible seizure was given on the grounds of necessity (*darura*) and public welfare (*al-masalih al-mursala*). This may have seemed the only way to save the caliphate itself in al-Mawardi's time but this legitimization of *istila'* (forcible seizure) was a crucial step in eroding the moral basis of authority.

Before considering the views of al-Ghazzali (d. 1111), it should be pointed out that this study is confined to those views of past thinkers which are relevant to tracing how centrist Muslim constitutional thought (and subsequent practice) developed. Al-Ghazzali, for example, wrote and lectured on a wide range of subjects but his constitutional ideas (as a development of those of al-Mawardi) are to be found mainly in his *Ihya, Kitab al-Iqtisad fi'l-i'tiqad, al-Mustasfa* and

al-Mustazhiri besides the exhortatory *Nasihah al-Muluk*. The same reasons and considerations of space prevent an analysis of the formidable and dazzling array of all Muslim writers on constitutional matters. Indeed, even where those who have been examined are concerned, analysis has been restricted to those aspects which illuminate the changing relationships between different parts of the structure of the state and society, constitutionally and legally.

By al-Ghazzali's time it was apparent that the hoped-for reservation of certain actual responsibilities for the caliph was not acceptable to the Buyids or the subsequent Seljuks and he, therefore, emphasized the symbolic role of the caliph, setting an example in piety, humility and charity and the "study" of *shari'a*. He also gave further importance to the *ulama'* for the actual administration of law, emphasizing that the *ulama'* should establish some equation with the military and the bureaucracy. Nevertheless he carried al-Mawardi's doctrine on *istila'* (forcible seizure) one step further (to the capital itself) by holding that the actual wielder of power (*shawka*) could lawfully designate the caliph and indeed he conceded to the same wielder of *shawka* the right to depose an impious caliph. All this clearly involved a large degree of passive acquiescence on the part of the *Umma*, summed up by citing a proverb from past *hukuma'* (sages) to the effect that: "Sixty years of tyranny is better than one hour of anarchy." The basis of this reasoning, which was but a logical development of previous thought and acquired added force after him, is worth quoting in full to show the dilemma in which the realities of military power as exercised in those times had placed thinkers anxious to ensure that Muslim belief and practice were preserved come what may. Writing in the *Ihya*, al-Ghazzali stated: "An evil-doing and barbarous *sultan*, so long as he is supported by military force, so that he can only with difficulty be deposed and that the attempt to depose him would create unendurable civil strife, must of necessity be left in possession and obedience must be rendered to him..." He cites his earlier work, *al-Iqtisad*, on this matter: "... These concessions which we make are involuntary, but necessities make allowable even what is prohibited... Who is there, I ask, who would not support this, but would argue for the voidance of the

imamate in our day because of the lack of the requisite qualifications? ... Which is the better part, that we should declare that the *qadis* are divested of their functions, that all *wilayat* are invalid, that no marriages can be legally contracted, that all executive actions in all parts of the earth are null and void, and to allow that the whole creation is living in sin—or to recognize that the *imamate* is held by a valid contract, given the circumstances as they are and the necessity of the times?"

A study of the writings of the Later Abbasid period brings vividly to life how closely what they wrote is only explicable in the context of the actual political and military conditions that were faced by the Abbasids. Inevitable as they may have been, their legitimization of force together with calls for total obedience on the part of the *Umma* led to a moral erosion and a political quietism whose traces persist in many areas to this day. This is notwithstanding the fact that this attitude failed to prevent the continued decline of the Muslim political state structure and proved powerless to stop the Sack of Baghdad in 1258. Yet the Mongols were far from invincible as was shown two years later when they were stopped at Ayn Jalut in 1260 by the Mamluk Sultan Baybars.

Legal

Returning now to consider the Monarchical Caliphate (661-1258) from the legal aspect of how the understanding of *shari'a* developed in *fiqh*, the establishment of the Umayyads and the shift from Medina to Damascus led to an almost total preoccupation of the ruler and government with the practical side of legal questions that arose with great frequency and which left little time for systematically ascertaining the *shari'a* position. The new official judiciary formed after 715 did not arouse much confidence in the *Umma* on their *shari'a* competence and the Muslim people increasingly sought out learned men who considered legal questions uninfluenced by official pressures and considerations. A bifurcation took place whose effects are still identifiable. On the one side was the law as applied in practice and on the other side was the law as ideally understood, predicated on the existence of an ideal society. The first was pragmatic and empirical while the second was idealistic, even romantic.

The two main centres of independent legal activity were Medina and Kufa and the earliest such lawyers who acquired popular esteem were Ibrahim Nakha'i (d. 713) in Kufa and the "seven lawyers of Medina" the last of whom died about 723. Then in the next half-century, straddling the Umayyad and Early Abbasid periods come the real founders of the earliest main schools of law such as Jafar al-Sadiq (d. 765), Abu Hanifa in Kufa (d. 767), Malik b. Anas in Medina (d. 795). The main activity of Abu Hanifa's two disciples, Abu Yusuf (d. 798) and al-Shaybani (d. 805) comes mainly in the Early Abbasid period (which begins in 750) while the founder of another surviving school of law al-Shafi'i (d. 820) follows soon thereafter. With Ahmad b. Hanbal (d. 855) the founder of the last surviving school of law and also the compiler of the *Musnad* (a large book of traditions) we have the link between the founders of the schools of law (the *a'imma* or *mujtahidun mutlaqun*) and the six compilers of the traditions (the *muhaddithun*) which make up the *Sihah Sitta*, starting with al-Bukhari (d. 869) and ending with al-Nasa'i (d. 915). The last founder of a school of law (now extinct) was al-Tabari (d. 923) and with his passing the right of Absolute *Ijtihad* (*Ijtihad Mutlaq*) may be said to have ended.

In Medina there was an emphasis, originally, on the "way" of Medina as a sound index to the true import of the Qur'an and the *sunna* (way) of the Prophet. In Kufa in Iraq, on the other hand, with its novel conditions there was a greater use of *ra'y* (sound opinion). These differences between Malik and Abu Hanifa (with his two disciples) were sought to be reconciled by al-Shafi'i. Although he did not succeed in this and became the founder of another school of law instead, he obliged both Medinese and Kufans (or Malikis and Hanifis as they became) to systematize their legal theory. Indeed al-Shafi'i with his acute juristic reasoning may be regarded as the great systematizer of Islamic jurisprudence. Rules for Qur'anic understanding were spelt out in detail through debate and discussions. The *sunna* of the Prophet was clearly distinguished from the *sunna* (way) of Medina leading subsequently to the great *hadith* compilations of al-Bukhari and the other five of the *Sihah Sitta* (the Six Sound Compilations), apart from the *Musnad* of Ahmad b. Hanbal. *Qiyas* (analogy) was subjected to precise rules in its role of extending

shari'a principles to new situations. *Ra'y* (sound opinion) gave way to precise rules for the exercise of *ijtihad* (disciplined exertion to understand the meaning of *shari'a*). *Ijma'* (consensus) was deduced from *shari'a* (i.e. the Qur'an and *sunna*) as the authorizing principle putting an end to doubt once different understandings through *ijtihad* had coalesced into an agreed understanding on a particular question.

Although there are variant views on the nature of *ijma'* (with the Malikis placing emphasis on the *ijma'* of Medina and the Hanbalis giving far greater weight to the *ijma'* of the *salaf* or first three Muslim generations and distrusting later *ijtihad*, apart from the Jafari view of the *ijma'* of the *mujtahids* who continue to exercise the right of *ijtihad* to the present) the later Shafi'i view and the dominant Hanafi view has been that it is the consensus of the *Umma* which completes and makes authoritative and binding any preliminary consensus of the "competent". Thus in legal matters, as much as in constitutional as noted earlier, the *Umma* had a crucial and decisive role in the great period of creative growth in Muslim history. *Ijma'* is, in essence, a consensus of acceptable *ijtihad*, i. e. acceptable to the Community as undertaken, obviously, by those who are acceptable to the Community. Indeed these great legal thinkers and their schools have survived precisely because they obtained Community consent. If other schools of law (e. g. of al-Awza'i, d. 774, of Sufyan Thauri, d. 778 and of al-Tabari, d. 923) became extinct, it is because they lost support in the Community. The free choice by the individual Muslim of one school over another and the consequent contraction or growth of the various schools rested on a democratic acceptance or rejection, imperceptibly and by general consent.

Ijtihad was of three descending degrees—*ijtihad mutlaq* (absolute *ijtihad* as exercised by the founders of schools on first principles of understanding); *ijtihad fi'l-madhab* (*ijtihad* on major questions of applied law within the principles of a particular school of law); and, finally, *ijtihad fi'l-masa'il* (or rulings on specific questions). But the nature of *ijma'*, classically understood as being "protected from error" in an unqualified manner, meant that once this *ijma'* or consensus was reached (retrospectively) through *ijtihad* the particular

question could not be reopened. The field for *ijtihād* continuously contracted and, as noted, the door of absolute *ijtihād* closed with the death of al-Tabari in 923 shortly before the end of the Early Abbasid period in 945.

During the Later Abbasid period, *ijtihād* within the schools continued to contract until it was almost totally replaced by *taqlid* (imitation or blind acceptance of previous authority). Islamic law became fixed and unchangeable. This refusal to re-examine "settled" questions became even more pronounced with the decline of the central Muslim state. Conformism was demanded in the hope that it would lead to unity. Debate seemed to lead to dissension and anarchy. Thus, at the very time that reform and reconstruction might have strengthened the state and society there was stagnation and paralysis. If such strengthening had been allowed to take place, the Mongols might well have been stopped long before the Sack of Baghdad in 1258, instead of being turned back in 1260 by the Mamluk Sultan Baybars two years later in northern Palestine—after irreparable damage had been done at the *Dar al-Khilafa* itself.

FOURTH ERA: THE POST-CALIPHAL INTERREGNUM (1258-ca.1500)

Relevant Events

From 1258 until about 1500 the Muslim world was divided into a multiplicity of kingdoms and principalities, sometimes at war with each other, sometimes working with a common purpose against outsiders such as the Christian Crusaders. Near the end of this Era (1492) the Iberian peninsula had been totally lost. On the credit side Istanbul had been taken in 1453 and by 1529 Muslims were laying siege to Vienna for the first time. The northern part of the South-Asian sub-continent had become Muslim predominantly in its north-western and eastern parts, while the same Mongols who had ravaged the Middle East under Hulaku Khan became Muslims themselves under his descendants. Likewise, during the earlier part of this Era Sudan and Somalia became Muslim and by 1291 with the recovery of Acre the Crusaders were completely expelled.

Constitutional

But constitutionally there was no longer even a nominal central authority. Some later historians have tried to build a legend of caliphal continuity by regarding the fugitive Abbasid who was given sanctuary in Cairo by the Mamluks as the start of the "shadow" Cairo Abbasid caliphate. But the Mamluks kept him and his descendants in total subjection. Only a few regional rulers bothered to obtain an investiture from him at moments of difficulty when clutching at any straw and at Mekka the *khutba* was not recited in his name with the solitary exception of al-Musta'in (1406-1414) who was distinguishable by being elected *sultan* of Egypt (in addition to his being "caliph") during a period of internal Mamluk disputes.

These political realities led to some major rethinking by the intellectuals of this Era, although one person in particular tried to build upon the pre-1258 line of thought (Ibn Jama'a). Before examining this, it is important to point out that all of them were motivated by a concern for the unity of Muslims and their well-being. Ibn Jama'a (d. 1333), a chief *qadi* in Cairo under the Mamluks, believed that this was best achieved by a further development of pre-1258 thought, i. e. to continue to focus attention on a central caliphal authority as the fulcrum of unity. It will be recalled that after the successful assertion through *ijma'* of Abbasid legitimacy by al-Baqilani, there was a legitimization of *istila'* (forcible seizure) by al-Mawardi with respect to rebellious governors or their descendants to provide a basis for obtaining their support in helping the caliph against his opponents even if this meant also legitimizing the *de facto* military ruler in the capital, the *amir al-umara'*. By al-Ghazzali's time, this process of legitimizing *istila'* had reached the point that this *amir al-umara'* or whoever was the wielder of *shawka* (force) was also "authorized" to depose and replace the caliph himself.

Ibn Jama'a in his *Tahrir al-Ahkam* carried this legitimization of force to its final conclusion, trying to reconcile the dichotomy between *khalifa* and *sultan* by empowering the *sultan* with the right to not merely depose the caliph but to assume the caliphacy himself. Possibly he hoped to provide a constitutional basis for the Mamluks to become the new focus of Muslim unity, but his uncertainties in this approach are shown by the way he used the terms *khalifa*, *imam* and *sultan* either interchangeably or hyphenated. The culmination of this legitimization of *istila'* may be found in Ibn Jama'a's *Tahrir* as follows: "If the *imamate* is vacated and someone ordinarily ineligible seeks it, and conquers the people by force of arms, even without a *baya* or designation, his *baya* is considered contracted and he must be obeyed, in the interests of the order and unity of all Muslims. It does not matter if he is ignorant or evil-doing on the whole. If the *imamate* is contracted by power and force to one person, then another arises and defeats the first by force of arms, the first is deposed and the second becomes *imam*, for the reasons we have given concerning the interests and unity of the Muslims. This is why Ibn Umar said: 'We are on the side of the victors'."

However the Mamluks themselves were not, apparently, persuaded by this line of reasoning and never attempted to claim the caliphacy for themselves and this is also explicable by the fact that at the same time as Ibn Jama'a, there was a powerful thinker drawing very different conclusions from the cataclysm of 1258, namely his lifelong opponent and contemporary, Ibn Taymiyya (d. 1328) whose main work on this is *al-Siyasa al-Shariyya*. To Ibn Taymiyya the *khilafa* ended in 661 and both the Umayyads and the Abbasids were no more than monarchies (*mulukiya*). The place of Islam had been and could be ensured however in such a situation if the primacy of *shari'a* or the rule of law was asserted, and legislative and judicial aspects were referred to the experts (the *ulama'*) whose acceptability depended on their adherence to *qist* (justice). He identified the socio-political structure in which this could function by recognizing the human need for *ijtima'* (association) with a *ra's* (head). This *ra's* was to be identified through a looser form of *shura* and must be guided by the Qur'an and *sunna* with the assistance of the *ulama'*; the only *ijma'* which was unquestioningly binding being that of the *salaf* (the first three generations). In this there was no place for *istila'* in theory, but his stress on obedience to only that which is lawful from the *ulu'l-amr* (those in authority) became virtually a total obedience once again, because of his fear of anarchy being the inevitable result of even justified revolt. Nevertheless his views did much to restore the necessary moral basis on which the state and authority should rest.

There were other thinkers of very different types during this Post-Caliphal Interregnum from 1258 to 1500. Some sought understanding of the best method of achieving the unity and well-being of Muslims by examining what happened in history or from a sociological point of view. Thus Ibn al-Tiqtaqa (d. 1301), a Shi'a, gave for the benefit of the ruler of Mosul, in his work, *al-Fakhri*, an evaluation of past Muslim states from the point of view of "effective" government fixing as the ideal state *al-khulafa' al-rashidun*. He then compared the Umayyads favourably with the Abbasids in this respect. Ibn Khaldun (d. 1406) in his *Muqaddima* set out both a philosophy of history and a sociological study of the Muslim world. He also consi-

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dered the first four *rashidun* caliphs as the true *khilafa*, but regarded the Umayyads and Abbasids as *mulukiya*. Such a monarchical system could still be acceptable even if an amalgam of religious law (*shari'a*) and purely administrative and political regulations (*qawanin*). The essential driving force for a successful state of this nature was an elitist group possessing feelings of solidarity (*asabiyya*) provided they too were animated by a religious impulse. The decline of states, he attributed to the decline of the religious *elan* amongst this elitist group.

Yet another category of thinkers, often occupying important positions, concentrated (in pre-Islamic Persian style) on the *adab* or "mirror-literature" which tried to achieve the good society by exhortations to the ruler to be pious and rule piously. They failed to carry conviction at a larger community level, like another group of thinkers who sought to transfer the Greek Platonic tradition of political philosophy into pseudo-Islamic concepts.

It was left to Jalal al-Din al-Dawwani (d. 1502) in his *Akhlaq-i-Jalali* to gather these different strands into an acceptable Islamic framework which provided the governmental basis of the Ottoman and Mughal Empires of the (Fifth) Imperial Era we shall next consider. In brief, the idea that legitimacy could be achieved by naked force (which had reached its *reductio ad absurdum* in Ibn Jama'a's thought) was now replaced by a distinction between the righteous and unrighteous state by stressing that in an Islamically acceptable righteous state the ruler (even if not a true *khalifa*) must conduct himself according to a certain moral code of conduct which al-Dawwani identified as *shari'a*. The ruled, for their part, must be accorded (and remain within) their prescribed place in society and state. Thus in matters of religion (including education and the judiciary) the ruler must defer to "men with knowledge" and the military must remain within their proper sphere of activity. This last was, no doubt, a reaction to the *istila'* of past theory and practice. Thus the touchstone for obedience became the supremacy of *shari'a*, although at the same time al-Dawwani considered religion and government as "twin pillars" each having its appointed sphere of activity.

Legal

While constitutional theory, and to a large extent subsequent practice, was moving to a new equation of the executive head (*sultan*) acquiring legitimacy from his deference to the *ulama'* and other "men of the pen" as the exponents of *shari'a* in a virtual refraction of law between the religious and secular, the legal developments during the Post-Caliphal Interregnum (1258 - ca. 1500) were notable for a definitive end to any *ijtihad* (between 1300 and 1400) with the entire body of law now fixed immutably by *ijma'*. In such a situation, the *Umma* no longer had any part to play, their sanction being no longer necessary for the results of any *ijtihad* and thus, in law as in constitutional matters, the Muslim Community was totally submerged. This situation was further accentuated by the stress on total obedience both to the ruler (constitutionally) and to the "experts" (in matters of law).

By this process, the men of religious learning had become remote from the Community in terms of seeking general acceptability and it was more important for them to keep on the right side of the establishment in the theological seminaries. Legal activity laid constant stress on pious *taqlid* (imitating and obeying without question the opinions of previous generations of learned men) and the legal works now produced were commentaries upon previous works and these, in turn, were replaced by glosses upon such commentaries. The Community went elsewhere to seek religious solace and strength, notably the *ahl al-tasawwuf*, the followers of the mystic path, and their shrines.

FIFTH ERA : THE IMPERIAL STATES (ca. 1500 - ca. 1800)

Relevant Events

From about 1500 until about 1800 the central Muslim stage was dominated by three Imperial states—the Safavi, Ottoman and Mughal. Between 1501 and 1511 the Safavis under Shah Ismail established an increasingly Shi'i state in Iran. The Ottomans, after occupying Damascus and Cairo in 1517, established control over Greater Syria, Egypt, the Hijaz and Yemen the same year and then within the next half-century occupied Iraq, Muslim Crimea and the whole of north Africa (except Morocco). Their north-western expansion brought them to Vienna by 1529 where they remained poised for the next 150 years until their second Siege of Vienna in 1683, holding virtually all the Balkans and turning the Mediterranean once more into a Muslim lake. Meanwhile the Mughals under Babur entered Delhi in 1526 and within sixty years controlled practically the whole of the sub-continent of southern Asia.

Decline set in with the Safavis after the death of Shah Abbas II in 1666, the dynasty ruling only parts of Iran until its end in 1732. Ottoman political decline may be dated from 1699 when they signed their first treaty (Carlowitz) as a defeated power. The death of Aurangzeb Alamgir in 1707 marked the beginning of Mughal decline. The Battle of Plassey took place in 1757. By the Treaty of Kuchuk Kainadjı in 1774 the first Ottoman Muslim-majority area (of the Krim Tartars) fell to non-Muslims. In 1798 Napoleon entered Cairo. In 1799 Tipu Sultan fell at Seringapatam. In 1803 Lord Lake entered Delhi.

After the Safavis, the Afsharid Nadir Shah briefly restored Iranian power, occupying Delhi in 1739 but more importantly, he is a leading

figure in the process of Shi'a-Sunni reconciliation, seeking to obtain (without success at that time) recognition amongst his Sunni neighbours for the Jafari school as the fifth orthodox school alongside the four surviving Sunni schools.

Constitutional

The structure of the Ottoman and, to a lesser extent, the Mughal imperial states were based essentially on the theoretical formulation of al-Dawwani noted earlier. The supremacy of religion was symbolised by the deference paid by the *sultan* to the *shaikh al-Islam* in Istanbul or the *sadr* (as he was usually called in Delhi), as the exponent of *shari'a*-understanding.

In the Ottoman case, the *ulama'* conceded the permissibility of a distinction between *shari'a* (true religious law) and *qawanin* (laws promulgated by the executive through imperial *firmans*). In the Mughal case the same result was achieved by the *mazalim* or appellate jurisdiction of the emperor.

The Ottoman *ulama'* are to be distinguished, however, by the fact that (like the Ottoman bureaucracy) they became a highly institutionalized hierarchic structure fully controlling matters of religion, education and the judiciary. There was, in fact, a triangular power equation at Istanbul. There was the executive (*sultan*) with his bureaucracy, then the traditional *ulama'* and, finally, there was the traditional military of the *Yeni-cheri* (Janissaries). Executive attempts at modernization to meet the growing threats from Russia and the West were met by opposition from an *ulama* - Janissary combination. The former opposed modern learning in general and the latter opposed any attempt to create rival "new-style" military forces. Challenges to the *ulama'* position were met by threats of force from the Janissaries. Challenges to the Janissary position were met by *fatawa* from the *ulama'* declaring such measures as heretical *bid'a* (innovations). This *ulama'* - Janissary phalanx against any change, however necessary, was only broken in 1826 when Sultan Mahmud II first destroyed the Janissaries after eighteen years of careful preparation.

There were significant differences in the Mughal situation. For one thing, the Muslims were a ruling minority in a heavily non-Muslim-majority state. In contrast, the Ottomans were head of a Sunni, Muslim-majority empire in which, in any case, the minorities were *ahl al-kitab* as traditionally understood and provided for. Thus classical Islamic law provided in a workable manner a framework for Ottoman stability. In the Mughal case, not merely were the Muslims themselves of different schools and sects (Sunni and Shi'a) but the non-Muslims were largely Hindus who were not provided for in classical Islamic law. As a result Muslim rule in the sub-continent oscillated between two extremes—either of some sort of “national” pan-religious or secular dispensation under Ala al-Din Khilji (d. 1316) and Akbar (d. 1605) or veered to the other extreme of total reliance on the Muslim (minority) ruling establishment, of Firuz Tughlak (d. 1388) and of Aurangzeb (d. 1707). The oscillations became more pronounced each time. Clearly the search for some enduring viable Muslim basis for constitutional stability could only have met with success if there had been permitted some basic *ijtihad* which reconciled Shi'a and Sunni and provided an acceptable and honourable place within the framework of Islamic law for the Hindus and Buddhists, similar to that accorded to the *ahl al-kitab* of Christians and Jews in the traditional Hanafi law which sufficed for the Ottoman state.

The beginnings of such necessary *ijtihad* were made by Shah Wali Allah Dehlavi (d. 1762) whose creative thinking is best considered under the Legal developments of this Era below.

Legal

By 1500 certain matters had been “settled”. There was the clearly identifiable *ulama'* graduating through their theological institutions and depending only remotely on popular support. This was particularly true in *shari'a* understanding as it crystallized in *fiqh* which now rested on *taqlid* which required no popular sanction. The gate of *ijtihad* had long since closed and with it disappeared any need for community approval to the results of *ijtihad*, as required in Hanafi and Shafi'i law, in particular. Of the major schools, only the Ithna Ashari recognized the continuing right of *ijtihad* by the

mujtahids of the age whose consensus became authoritative as representing the Twelfth Imam. In all cases, however, the Community was no longer consulted and this may explain why, in actual results, the stationary case-law of all five schools differed less in kind than in detail.

Again, a comparison between Ottoman and Mughal is revealing. For reasons mentioned earlier the Ottomans were better placed to implement in practice al-Dawwani's theories. This gave them greater stability (and strength) in the two centuries after 1500 when compared with the oscillations of the Mughals. But when decline began after 1700, Ottoman stability turned to rigidity while the relative amorphousness of Mughal concepts and institutions gave Muslim Southern Asia a greater flexibility and toleration of dissent.

Without going into the complexities of the Ottoman structure, broadly speaking, there was a *sultan* bowing to the supremacy of the *shari'a* at the apex with the “twin pillars” of a grand *vizier* heading the bureaucracy and the *shaikh al-Islam* heading the *ulama'*. The judiciary came under the *shaikh al-Islam* with *qadis* (judges) in graded ranks being assisted by both official and non-official *muftis*. In theory Hanafi law was applied in the fixed form it had assumed since the closing of the gate of *ijtihad*. But this was mitigated in significant ways. First, imperial *kanun-names* and rescripts were in force alongside the *fatawa* of *fiqh* proper, ostensibly in full conformity with *shari'a*, it is true, but making allowance for custom and state necessity. This procedure had begun from the time of Sultan Mehmed II (d. 1481) but reached its full exposition under Sultan Sulayman II (d. 1566) at the hands of his *shaikh al-Islam* Mehmet Abul-Su'ud Effendi. Second, at the other extreme, the *qadi's* jurisdiction remained aloof from lesser matters and these were dealt with by the often ad hoc decisions of the *muhtasibs*. Third, administration of justice was largely done by the heads of self-governing trade guilds as well as the tribal methods of dispensing justice outside the cities. Fourth, the *muftis* who advised the *qadis* often found a way around applying the strict provisions of *fiqh* by selecting from past *fatawa* in a somewhat arbitrary manner. Fifth, the rigidity of *fiqh* was softened by the

shari'a courts admitting qualifying circumstances (*shurut*) and legal "devices" or stratagems (*hiyal* sing. *hila*).

These *hiyal* had come into existence from a much earlier time and whole books were devoted to the subject. They received approval in the Hanafi school and, at a later stage, in the Shafi'i. The other schools found their own methods of dealing with this problem which need not detain us here. In essence a *hila* can either facilitate the application of the true intent of the law by a form of equity or it can evade the strict application of the law. A typical example of the latter is the device of a double sale to evade the *riba*-prohibition as classically understood. In many cases, times and places (not merely Ottoman and Mughal) these *hiyal* have supplied the link bridging the fissure in *fiqh* which had begun, as noted, in early Umayyad times between the ideal, normative, ethical-legal statement of the law and the practical, workable application of the law when faced with the realities of a situation. *Hiyal* became the solution often adopted when *ijtihad* was no longer permitted.

A great deal of the foregoing is equally applicable to the Mughal state, although the Mughal system relied less on a rigid institutional framework and more on an absolute and direct imperial control (duplicated through appointed governors at the provincial level) with an appellate *mazalim* jurisdiction of the head of state. There was also the fluctuation in basic central policy symbolized by Akbar and Aurangzeb while the judiciary was necessarily more flexible in view of Muslim sect multiplicity in the sub-continent and the tremendous variations in customary law and in cases involving Hindus of different regions, castes and habits. The reassertion of a uniform classical Islamic law in the *Fatawa-i-Alamgiri* successfully codified the law in personal matters which sufficed (with the *hiyal*) for Hanafis for long afterwards. In penal and fiscal law and in inter-religious relations its effects were not so satisfactory and the revolts against Mughal authority amongst the Shi'a kingdoms of the Deccan and the Mahrattas, Rajputs and Sikhs were traceable in large part to their attitude to this codification of Hanafi law.

The notion that the British "took" the sub-continent from the Muslims alone is one of those legends which greatly distort our true understanding of what actually happened. During the eighteenth and more so the nineteenth centuries, parts of the Mughal empire were lost (in the west) to Mahrattas and Rajputs and (in the north-west) to the Sikhs. Indeed after 1750, the sub-continent had become a patchwork of principalities and pseudo-kingdoms, some ruled by Muslims and others by Hindus, making alliances against and with the British or the French. Unless one is to dismiss such events as the working of some blind law of rise and fall, the causes have to be found for the Mughal decline. One of the important factors must surely be the fact that the classical, traditional fixed understanding of Islamic law was no substitute for the wide-ranging and basic *ijtihad* which the Muslims of the sub-continent needed perhaps more than any others.

The best evidence that this was so may be found in the writings of Shah Wali Allah of Delhi (1702-1762). He emphasized three major matters: a moderate *ijtihad* in place of the rigid *taqlid* of the past; sect reconciliation between Sunni and Shi'a (*tatbiq*); and finally he stressed Islam's populist, non-priestly nature as one of its main strengths and virtues, compared to Hinduism, giving effect to this by translating the Qur'an into Persian for the benefit of a wider, lay class—a process accelerated by his grandsons when they translated the Holy Book into Urdu, thereby widening still further the number of Muslims who had access to the source of Islamic thought and law.

Similar stirrings were taking place elsewhere. There were the repeated attempts to introduce printing in the Ottoman empire, finally by Ibrahim Muteferrika (d. 1745) in face of strong *ulama'* opposition. In the Arabian heartland itself, Muhammad b. Abd al-Wahhab (d. 1793) revived Ibn Taymiyya's teachings particularly in matters of ritual and doctrine and he was the ideological inspiration for the Muwahiddun movement with its battle against idolatrous beliefs, rituals and practices. Thus, long before the Western intrusion had made itself felt as a real threat, the Muslim world itself was becoming aware of the serious shortcomings of its structures and

attitudes and moving (in contrasting directions) away from the immediate *taqlid* and immobility of mediaeval Muslim thought and practice. If this process has been extremely slow and its results have seemed minimal, it is partly evidence of the vitality of a community reluctant to modify its concepts. But also the explanation may be found in the observations made towards the end of this survey.

SIXTH ERA : IMPERIAL DECLINE AND FOREIGN DOMINATION (ca. 1800 - ca. 1925)

Relevant Events

The melancholy account of Muslim reverses in the central area during this one and a quarter centuries may be summarized as follows: the French occupied Algeria (1830-49), Tunisia (1881) and (together with Spain) Morocco (1901-12). The Russians completed the conquest of Azerbaijan between 1803-06 and of Turkestan (1846-95). Egypt, after a period of independence under the Khedive Muhammad Ali and his successors from 1805, was definitively occupied by the British in 1882. Iran preserved a precarious independence under the Qajars, playing the Russians off against the British and enduring occasional occupations from south or north. The Mughals, having lost large areas to the Mahrattas, Rajputs and Sikhs, continued to lose the rest to the British, surviving as shadow-monarchs in Delhi until they were finally extinguished in the aftermath of the 1857 revolt. The Ottomans fought a long rearguard action against the West and Czarist Russia, punctuated by military defeats which culminated in the Allied occupation of Istanbul in 1920.

Constitutional

The grave reverses listed above naturally had far-reaching effects on the constitutional position both amongst those which fell under foreign rule *de jure* and *de facto* and amongst those which legally remained independent, even if foreign pressures grew in strength.

Taking the sub-continent as an example of the first category which fell under foreign rule, the ideal of a *sultan* as focal point of Muslim unity and well-being continued in traditional circles not-

withstanding the constant reduction in Mughal authority. After the failure of the Mujahidin revolt in the 1830s, one last effort to restore Mughal authority was made in the 1857 revolt. Its result, on the contrary, was to eliminate the Mughal emperor, even as a titular figure, and also to eliminate the Muslim ruling classes as well. There is no sign that this made traditional circles re-examine their assumptions about a monarchical solution or look any deeper for the causes of Muslim decline. They possessed a backward-looking attitude in their search for solutions to immediate problems. They made a shift in loyalties to regarding the Ottoman *sultan* as the best rallying point for Muslim resurgence. This was greatly helped by the policies of the Ottoman Sultan Abd al-Hamid II after 1876 particularly, noted below.

With regard to the category of states which retained legal, and even actual, independence, the Ottoman *sultan* and the bureaucracy acquired increasingly unrestricted internal power after the 1826 destruction of the Janissaries by Sultan Mahmud II. By this act, the *ulama'* lost their coercive weapon against change. Reforms were initiated by Sultan Mahmud II, the more rapid and drastic for having been suppressed for so long. The process continued with unabated strength in the Tanzimat period from 1839. The Ottoman executive was able to carry out, without past *ulama'*-Janissary restraints, extensive military, educational, administrative, commercial, agrarian and legal changes, even invading spheres of *shari'a* jurisdiction which had been reserved to the *ulama'* for centuries. The Legal aspects are considered later.

But constitutionally, the basis of the Ottoman state began shifting from being Islamic, as it had been for centuries, to being "Ottoman" in the hope that by stressing the Ottomanism of all citizens (Muslim and non-Muslim) this would stem the tide of revolt amongst Christian regions of the Balkans and the Caucasus, and the now wavering loyalties of non-Muslims in the Middle East. (There are some parallels in this to the attempts of Pakistan to secure the loyalty of the Hindus of East Bengal up to 1971). In point of fact, however, all this new "Ottomanism" did was to create unease amongst non-Turkish Muslim citizens such as the Arabs, Albanians, Bosnians and Kurds. In any case "Ottomanism" proved an artificial concept and from the end of

the 19th century, Ottomanism began to be replaced by the more extreme solution of Turkism or even Pan-Turanian ideas (fed by race-conscious Western writers). This was acceptable to the Young Turks and a thin layer of Turkish-speaking Muslims but completed the alienation of non-Turkish Muslims, leading directly to the Arab, Albanian and other revolts. Ironically, it did nothing to cure the disaffection of non-Muslims who continued to agitate and fight for separation where feasible or worked as agents for Western powers or Russia in other areas.

Yet at the very time that Ottomanism was becoming fashionable amongst sections of the Istanbul intelligentsia in particular and embodied in the first modern Ottoman constitution of 1876 (based on the 1831 Belgian as modified by the more autocratic Prussian of 1850) Sultan Abd al-Hamid II was stressing not merely Islam and the *shari'a* in Articles of the Constitution not open to amendment but also asserting (in Article 5) a new-found role as Supreme Caliph. By thus reaching back before the time of al-Dawwani to make full political use of a title which had virtually ceased to have practical significance after 1258, this merely aroused criticism amongst the *ulama'*, particularly at al-Azhar. It is true that after 1258 the title of caliph was assumed by a wide variety of Muslim kings and lesser princes or used obliquely as a term of mutual politeness in correspondence, but it was never intended to convey its pre-1258 sense. However, it found new mention in the 1774 Treaty of Kuchuk Kainardji and then, in the 19th century, was used by the Ottoman ruler in order to acquire some additional leverage when bargaining with Western states or Russia, who liked to claim similar rights for themselves as protectors of various denominations of Christians living under Ottoman rule.

Thus the 19th century saw a gradual disintegration of the post-1500 al-Dawwani concept of an acceptable Islamic state that had been the basis of both Ottoman and Mughal empires. The *ulama'* component of the "twin pillars" was gradually being shut out from positions of authority by the increasing number of products of Western or modern institutions and the widening jurisdiction of "civil" as opposed to *shari'a* courts. This process took place regardless of whether the

executive was still Muslim and independent (as in the case of the Ottoman state or Khedive Muhammad Ali's Egypt) or colonial (as in the case of the sub-continent or Algeria).

Nevertheless the Ottoman *ulama'* supported the *sultan*, in spite of his role in whittling away *ulama'* power, partly because fealty to the monarch was a deeply-rooted part of their psyche. But they also did so because the main threat to them was coming from a new class of modern bureaucracy and intelligentsia as well as a new-style military establishment. The Mughal *ulama'* loyalty to the shadow-Mughal at Delhi until 1857 was also transferred to the Ottoman "caliph" in Istanbul as a possible rallying point for the revival of Muslim unity and preservation of Muslim identity. But, paradoxically, in practical, local terms they increasingly identified themselves with the avowedly secular Indian nationalist movement at the same time, which could hardly be reconciled with any classical or post-classical Islamic political thought. Perhaps it was a temporary expedient on grounds of *darura* (necessity) but in any case there was a basic contradiction in being a secular nationalist at home and being theoretically loyal to an external "Islamic caliph" at Istanbul, whose claims to such a caliphacy were not accepted by other *ulama'* in the Middle East. The possible explanation for this is the Indian *ulama'* view of the main threat being the West, their culture and power as represented by the British and not the Hindus whom they had ruled in the past.

A similar disintegration, or rather bifurcation, was taking place amongst the other types of "men of the pen". In the earlier phase of the Sixth Era, they were all products of traditional education but a section of them were diverging from the prescriptions of traditional thought, examining more deeply the causes of the malaise amongst Muslims and the explanations for Western success. By the 1920s, many were products of new educational institutions or education abroad. But before considering the general trends of these thinkers, one person who is unusual in his approach should be mentioned, namely Jamal al-Din al-Afghani (d. 1897).

Al-Afghani was a political activist working throughout the Muslim world for the realization of Pan-Islamism, primarily against

Western imperialism. For this he sought a suitable Muslim monarch as the spearhead. He was a prime mover in the Egyptian 'Urabi Revolt of 1882, and greatly influenced the Persian Revolution of 1906 and the Young Turk Revolution of 1908. He spent a considerable time in India. He wrote and lectured tirelessly and derived his very necessary activism from the Qur'anic verse he frequently cited; "Truly God will not change the condition of a people until they change themselves" (13:10). Curiously enough, in some places he obtained *ulama'* support and in others he aroused *ulama'* opposition. While welcomed by Muslim monarchs initially, he often incurred their suspicions, even hostility at later stages. In his writings, notably his one major work (*al-Radd 'ala-l-Dahriyyin*) he worked out a scheme for a spiritual caliphate to which local rulers paid allegiance, with a formula for political Shi'a-Sunni reconciliation and for a semi-federal *ulama'* structure providing for *ijtihad*. Much of this was visionary. It has continued to provide inspiration to the romantic and young of later generations but did not prove either acceptable or workable to his contemporaries, each struggling to meet the special local nature of the challenges they faced, however much they might have an underlying common substratum.

Other thinkers are more representative of the transitional group from the traditional to the modern age, that characterizes this Sixth Era. Apart from Khayr al-Din Pasha (d. 1889) of Tunis who in any case was largely connected with Ottoman developments, it will be found that the main intellectual centres during this Era are Istanbul, Cairo and Delhi. Given the strength of their traditional backgrounds it is not surprising that none of them could conceive of an Islamic state without a monarch and were basically elitist in approach. Yet at the same time, in various ways, all were keenly aware of the need for *ijtihad*. All were justifiably fearful of repeating the mistakes of our past and this found expression in an open-mindedness in trying to understand the sources of Western strength coupled with an appreciation of the virtues of 19th century European liberalism and the ideals of the French and American revolutions. The defects and decline of Western values and systems were only to be shown up in a future they did not experience.

Khayr al-Din Pasha's main work *Aqwam al-Masalik* was first published in Tunis in 1867, after he had played a leading part in drafting the first Western-type constitution in the Muslim world (the Tunisian of 1861). He lasted as Prime Minister thereunder for four years from 1873 and later became grand vizier in Istanbul in 1879 where he only survived one year for similar reasons of royal displeasure. Although supporting, in principle, a fully representative government, in practice he distrusted it and in his work defined "consultation" as between ruler and the *ulama'* and men of affairs. If this could be described as a limited constitutional monarchy, the limitation was one exercised by strengthening the powers of the ministers. His attitude to *ijtihad* was an exhortation to the *ulama'* to know both the "Law" and the "facts", both the "texts" and the "circumstances".

Ottoman writings and thought during the same period on constitutional matters are of varied kinds. There were those which were the precursor to the flood of legislative measures of the Tanzimat period. Others provided the thought-content for the movement from an Islamic state to Ottomanism to Turkism and Pan-Turanianism. Midhat Pasha (d. 1883) was the author of the 1876 Constitution based on a non-religious Ottomanism and a limited constitutional monarchy (soon suspended for thirty years by Sultan Abd al-Hamid II). Ahmad Cevdet Pasha (d. 1895) was the author of the *Majalla* considered below under Legal developments. Namik Kemal (d. 1888) was the most interesting in many ways, setting out his ideas on the state in a manner similar to Khayr al-Din Pasha. A monarchist although recognizing that the early Islamic state was "a kind of republic", he failed to solve the same dilemmas that had faced earlier Muslim thinkers regarding the measures to be taken when there was a breach in the contractual relationship between ruler and subjects but he emphasized freedom, to be secured by assuring personal rights (*huquq-u shakh-siye*) and political rights (*huquq-u siyase*)—the former depending upon impartial and competent courts and the latter on the separation of powers (*quwwatlerin taqsimi*)—all based upon representative government (*usul-u meshweret*) with *shari'a* providing the constitutional fundamental principles. For this he advocated the prevailing French structure, "supervised" by the *sultan*. He tried to reconcile

the (Ottoman) state, the (Muslim) community, the (Turkish) tribe and the (religious) denomination, but towards the end in the face of growing Slav and Muslim regional nationalisms, he abandoned any idea of an Ottoman nation and concentrated on the Islamic people (i. e. a union of all Muslims).

One interesting point about the short-lived Ottoman constitutional experiment of 1876-78 was the fact that it soon developed in its parliamentary debates a growing maturity. Commenting upon these debates the *London Times* on 20th February, 1878 observed: "They seemed to understand what was faulty in the machine of government and to have a certain comprehension of what was wanted to put it right." Another point that should be stressed about the channel through which Western ideas entered Istanbul (and indeed Cairo) was the fact that it was through France of the French Revolution. The French themselves were not averse to pointing out to Turks and Egyptians that the French Revolution, if not anti-Christian, was at any rate religiously neutral. This made its ideas more acceptable to Muslims, anxious to grasp modernism so long as it did not impinge upon their Islamic faith.

In Cairo, new thinking came from a small group amongst the *ulama'* of al-Azhar who virtually monopolized intellectual activity through their long-standing position in society there. Thus, Shaikh Rifa'i Badawi al-Tahtawi (d. 1873), widened the definition of '*alim*' in his *Manahij al-Albab* to include those versed in modern techniques and added fear of "public opinion" to fear of God as a restraint upon the ruler. Like Namik Kemal he was influenced by Montesquieu's separation of powers and believed that *shari'a*-understanding must meet new circumstances without specifically advocating *ijtihad*. His more famous successor Shaikh Muhammad Abduh (d. 1905) was Shaikh al-Azhar and Mufti of Egypt. Earlier, he had an activist phase with al-Afghani, but later concentrated on *ulama'* reform (not very successfully in spite of his position and prestige as Mufti of Egypt). He wrote on a wide variety of subjects, notably theology, history and law, and stressed *ijtihad* against *taqlid* which he regarded as a form of slavery. He believed in loyalty to the Ottoman *sultan* as "the chief bulwark of Islamic sovereignty" but dismissed Abd al-Hamid

II's claims to be caliph. But his constitutional and political interests became increasingly peripheral to his concern with education and reform in *ulama'* thinking. Towards the end of his life he began to have serious doubts about the efficacy of any attempt to bring about change from within the *ulama'* ranks and looked with growing interest at the approach of Sayyid Ahmad Khan in the sub-continent in his own scheme for setting up a new institute. He died before he could implement this or make his first planned visit to the eastern Muslim world of Persia, Russia and India. Like Ibn Taymiyya, he had qualified views about *ijma'*, outside the *ijma'* of the *salaf*, considering it not a matter of dogma but of "reasonable expectation". From Ibn Khaldun and the Western historian Guizot he developed a new sense of historical perspective.

Meanwhile in the sub-continent, in Delhi in particular, there was a new kind of intellectual emerging, above the Shi'a-Sunni controversies of the past, imbued with a need for *ijtihad* and non-clerical in approach—evidence of the growing influence of Shah Wali Allah's ideas of the previous century. Regarding the reconciliation between Shi'a and Sunni, the process can be traced through Karamat Ali Jawnpuri (d. 1873), a Shi'i disciple of Shah Wali Allah's school, to his Shi'i disciple, Amir Ali (d. 1928). This was marked in Amir Ali's treatment of Muslim history and in his advocacy of the compatibility of a Shi'a imamate with a Sunni caliphate and the importance of *ijma'*. Sayyid Ahmad Khan (d. 1898) displayed in writings such as his commentary on the Qur'an and on the life of the Prophet an approach that was unmistakably based on *ijtihad*. But his enduring impact was the founding of the educational Institution at Aligarh in 1875 through which a new generation of Muslims emerged conversant with the world in general and, thus, able to gauge the real dimensions of the problems and dangers facing Muslims. Almost contemporaneously in Istanbul the Imperial Ottoman Lycee at Galatasaray was opened where the medium of instruction was partly French and partly Turkish.

It was "men of the pen" from Aligarh and institutions inspired by it that was to provide a new ruling class of Muslims in the future in a manner similar to the process taking place in Istanbul and Cairo.

Yet the degree of reception of knowledge about the outside world in general was probably more extensive in the sub-continent, partly because of the constant pressure of Hindu competition, partly because the medium of instruction was Western as was the language of administration and partly because this Western language was more frequently used in educated circles in a multi-lingual sub-continent. At the same time, paradoxically, there was a greater insistence on religious instruction proceeding parallel with "modern" studies, faced as the sub-continental Muslims were with the double problem of the West and the Hindu majority. Unfortunately, because of traditional opposition, there was no attempt to harmonize the religious and modern aspects of education at Aligarh and similar institutions and the new class of Muslims has grown up with a schizophrenia whose effects are often apparent to this day—being entirely modern when dealing with day-to-day affairs and professional matters but rigidly traditional where religious doctrines are concerned.

A similar dilemma occurred as new constitutional stirrings developed around the turn of the century. While the Hindu-dominated Congress seized upon the prospect of India becoming a democratic state with undiluted majority rule, Muslim leadership became increasingly aware of the dangers that this posed for the numerically smaller Muslim community. Initially the Muslim response was to emphasize the importance of constitutional and legal safeguards and this concern with constitutional legality has become an enduring quality about Muslim political attitudes in the sub-continent. At the same time, as the undiluted concept of nationalism was making inroads in the Middle East with varying degrees of secular content, the fallacies of this approach and the dangers it posed to Muslims were becoming increasingly apparent in the sub-continent.

In the work of all these Muslims during the 19th century, one can detect some similarities. Those who concerned themselves with constitutional matters still thought in terms of a monarchy, although limited and constitutional—either through a separation of powers or "fear of public opinion" which represented some distant future glimmering of the *Umma* resuming a role. There was also an attempt to distinguish between the immutable and the changeable

in law within an Islamic context. There were attempts to reform *ulama'* education or thinking but the main effective developments, educationally, proved to be the new-style institutions whose products increasingly manned the administration, the military and even the judiciary. In all cases, with varying degrees of urgency, there was a call for *ijtihad*.

A lot of this was unstable. For one thing, to advocate *ijtihad* without devising an acceptable machinery for giving effect to it, leaves the law unchanged or casts doubt about the validity of any purported changes to the law. For another, there was an oligarchic quality about the new intellectual class and about the way they approached matters. In the early part of this Sixth Era they were people from a traditional background groping to understanding modern challenges. In the later part of this Sixth Era, their mastery of modern knowledge seemed to have been achieved at the expense of their grasp of traditional sources. This became more marked in the early 20th century at precisely the time when this new class became increasingly in control of Muslim political movements — whether it was the Wafd Party and its precursors in Egypt; those responsible for wresting the liberal 1906 Persian Constitution from a reluctant Qajar Shah Muzaffar al-Din; the Young Turks (the Committee for Union and Progress) after the deposition of Abd al-Hamid II in 1908; or the Muslim League groping against opposition on many fronts in the sub-continent. A new world was emerging beyond the comprehension of the traditional holders of learning.

Perhaps the final blow to the post-1500 *sultan-ulama'* equation was dealt by the deplorable conduct of the last Ottoman *sultan* Muhammad VI Wahid al-Din (regnabat 1918-1922) and his *shaikh al-Islam* Durrizade Abd Allah Effendi, in accepting the abortive 1920 Treaty of Sevres (which aimed at the partition of even Anatolia amongst the Allies) and the Allied occupation of Istanbul the same year. His successor (as "caliph") Abd al-Majid II lasted a further two years, until 1924.

The impending abolition of this "caliphate" led to attempts to reach back before 1500 to reviving the classical concept of *khilafa*

which had ended in 1258, as the best way to achieve Muslim unity and meet foreign threats. But this aroused only further divisions between Muslim countries and within each Muslim state. There were three possibilities: prop up the pseudo-caliphate in Istanbul, search for an alternative caliphate elsewhere, or concentrate on local manageable problems and regeneration without dissipating energies on the wider question of general Muslim unity for the moment. The first was the object of the Istanbul *sultan* and *ulama'*, the Indian *khilafatists* and isolated pockets of *ulama'* elsewhere. The second (with different candidates in mind) was the object of Sharif Hussein of Mekka, some sections of Middle Eastern *ulama'*, King Fuad of Egypt and some of the Azharite *ulama'*. Finally, the third was the position of King Abd al-Aziz in Arabia proper, the Kemalists in Turkey, the Wafd and other Parliamentarians in Egypt and the Muslim League in the sub-continent as well as important sections of the new Arab nationalists.

Thus by the end of the first quarter of the 20th century, it was obvious that the immediate or middle past (of the Fifth or Third Eras respectively) could not "be put back upon its throne" where Muslim constitutional requirements were concerned.

Legal

During this Sixth Era from 1800 to 1925 there was a steady contraction of the spheres in which *shari'a* law operated, as traditionally understood. It is a misleading explanation of this trend to assert that this was solely the machinations of foreign colonialism. The process was at work in independent Muslim states as much as those under foreign rule. The speed with which new legislation entered the Ottoman empire after 1826 was probably more rapid than the process of introducing Anglo-Muhammadan and Anglo-Saxon law in the sub-continent or the *Droit Musulman Algerien* and the Code Napoleon in Algeria. A similar process of change began with Khedive Muhammad Ali (d. 1848) in Egypt.

The other process of combining Islamic and western civil law can be seen in the advisory codification of Muhammad Qadri Pasha

in Egypt in 1875, the enduring *Majalla* (1877) of Ahmad Cevdet Pasha in Istanbul and (in colonial areas) the parallel draft but influential Code Santillana in Tunisia (1899) and the Code Morand in Algeria (1906). The *Majalla* survived in Republican Turkey until 1926, in Albania until 1928 and in many other former territories of the Ottoman empire until the 1950s, and in some (such as Lebanon and Jordan) it survives partially up to the present.

Yet distinctions should be drawn between legal change in independent Muslim states and those under colonial rule. In the former, the laws imported or adapted from outside were administered by a Muslim bureaucracy and judiciary (undergoing, as noted, degrees of modernization themselves). In spite of this, much of the new legislation was incomprehensible or out of harmony with their basic values. The situation was even worse with regard to the populace in general who were the ultimate recipients of this new dispensation. Unsatisfactory as much of the old order had increasingly become, it was nevertheless prevented from becoming totally arbitrary and despotic by a system of checks and balances that were generally understood. The old order crumbled to be replaced by a mysterious new disorder, made worse as legislation poured forth.

The other factor which led to increasing chaos, weakness and instability in the independent Muslim states was the fact that the Ottomans, the Khedives of Egypt and the Qajars of Iran fell into the hands of Western moneylenders and bankers. They were caught in a paradox. The traditional Muslim guild system had disintegrated in face of the cheap machine-made goods of Europe after the 1760 Industrial Revolution. To maintain their independence, they had to modernize and equip their military forces, to industrialize and build efficient communications of all sorts. But a self-generating Muslim industrial revolution would have required a mental revolution which in turn was blocked by the heavy atmosphere of *taqlid* and the mystique of mediaeval authority. Thus the only alternative was to purchase equipment from abroad and make imitative attempts to modernize their economies. This required money which was only obtainable at exorbitant rates and was subject to increasingly close supervision by Western financiers and governments.

But these were desperate stop-gap measures. The much-needed intellectual renaissance would have had to unfreeze the immobility of traditional Muslim thought which in turn was another way of emphasizing the need for *ijtihad*.

On the other hand, in regions under colonial rule, it was hardly in the interest of the colonial power to create economic chaos, even if they were not averse to fostering ignorance and a subsistence standard of living. To that extent there was freedom from foreign moneylenders and economic stability at a low mass level of living. Where judicial, administrative and legal changes were concerned these functioned a little more effectively because, in the higher echelons at any rate, they were manned by foreigners who understood their mechanisms, coming as they did from the birthplace of these new systems.

But in all cases, these developments were shaky because they were not understood by the general public and did not carry any sense of moral sanction behind them, which could only have come (for a Muslim people) from the sources of Islamic belief. Nevertheless the new Muslim intelligentsia was sufficiently successful in its imitation of Western techniques and forms to achieve political and military victories in the new struggles for independence that marked the early phase of the Seventh (and present) Era to which we now turn.

SEVENTH ERA : INDEPENDENCE AND REPUBLICANISM (ca. 1925 onwards)

Relevant Events

The position in 1920 was the lowest, possibly in all Muslim history. The Hijaz had come under the control of Sharif Hussein with the aid of the British while the rest of the Arabian peninsula was the arena of contending rivalries, Abd al-Aziz al-Saud having gained control of Nejd. Istanbul was under Western Allied occupation as was the Ottoman *sultan*—“*khalifa*”. Iran, after enduring British and Russian domination and invasions was being conquered by Reza Shah. Egypt was a British protectorate. Greater Syria including Palestine and Lebanon as well as Transjordan and Iraq were British or French mandates. Central Asia and Transcaucasia were struggling in vain to regain their independence in the interregnum between Czarist and Soviet rule. North Africa was under the French. Libya and most of Somalia were under the Italians with the remainder of Somalia under the British, French and Ethiopians. Muslim Africa from the Sahara southwards was divided amongst the British and French colonial empires. The Afghans, in spite of their reverses in the Third Afghan War, had managed by diplomacy to recover their freedom in foreign affairs by 1921. Indonesia remained under the Dutch and Malaysia under the British. Albania after a revolt similar to the Arab revolt against the Ottomans was, for a brief period, an independent republic before falling under Serbian and Italian occupation in 1920. In the sub-continent, Muslims were still groping for some solution in the two-front conflict with the British and the Hindus.

During the next five years, an upswing in Muslim affairs began. By 1925-6, Ibn Saud had gained control of the Hijaz (with Mekka and

Medina) and unified the major part of the Arabian peninsula, the basis for this unification being the settling, as agriculturists, of members of the puritan Islamic Ikhwan movement to put this unification on new foundations above regional rivalries. In Iran, Reza Shah finally ended the Qajar dynasty in 1924 and ascended the throne himself after a brief period when it seemed that Iran might become a republic. In 1924, Albania again became an independent republic before becoming a monarchy in 1928. In what was to become Turkey, after a life and death struggle for survival against the Greeks and their Western allies, the Turkish nationalists under Mustafa Kemal proclaimed a fully independent republic in 1923, finally disenchanted by the conduct of the Ottoman *sultan* and his *shaikh al-Islam* in bowing to Allied demands that they oppose the war of independence being waged in Anatolia.

During the next twenty years, only two other countries regained independence, namely Iraq (1932) and Egypt (1936) although in both cases the British continued to exercise indirect control. Thus as late as 1945 the position was that there were four monarchies with almost total absolutism and virtually isolated from world developments (Yemen, Albania, Afghanistan and Saudi Arabia) and two monarchies that were semi-independent externally and with limited constitutionalism internally (Egypt and Iraq). Iran after having been independent during the inter-war years and having undergone a measure of modernization under Reza Shah, came under Allied occupation in World War II with its monarch exiled to South Africa. Finally, there was a solitary republic, Turkey, fully independent but deeply shaken by its narrow escape from virtual extinction after World War I and proceeding to modernize in a fully Western fashion with desperate speed under a one-party system dominated by Kemal Ataturk (d. 1938). There were two Kemalist attempts to add democracy to republicanism by sponsoring a two-party system (1924-25 and again in 1930) which proved abortive.

During the next twenty years, however, from 1946 about thirty Muslim states became independent—some as monarchies, some as dominions and the others as republic. At the same time, it is important to remember the reverses suffered during this time and the

outstanding issues that remain. A number of the Muslim-majority republics, particularly in western and equatorial Africa continued to be dominated by small Christian ruling elites left by the colonial powers. In south-east Asia a number of Muslim-majority areas were left under the control of non-Muslim states. Eritrea and the Ogaden struggled for freedom from Ethiopian rule and other Muslim areas continued under non-Muslim rule in central Asia and Transcaucasia. There were inter-Muslim border disputes in north Africa and the Middle East and degrees of dissatisfaction with central authority where Iran, Iraq and Turkey meet and also where Iran, Pakistan and Afghanistan meet. Kashmir remained as a constant reminder of Muslim weakness as did the progressive loss of Palestine from 1948 and finally the loss of the third most holy Muslim city of Jerusalem, in 1967.

Constitutional

From 1925 until the outbreak of World War II it can be said that the influence of Western ideas was at its peak in the Muslim world. Apart from the four states still in isolation mentioned earlier, and Iran which attempted to maintain a degree of isolation while undertaking some modernization, the most thoroughgoing results of Western or modern influence can be seen in Turkey. A balanced assessment of Turkish developments during these inter-war years is not easily found, least of all amongst Muslims. They cannot be understood except against the background of the previous two centuries of the Ottoman empire's struggles against outside threats and also the moribund state of the Muslim world during the Inter-war years. There was a failure to distinguish (which still exists) between Westernization and modernization. This has led to two opposing results. On the one hand, everything Western is adopted because it is considered an indispensable and inter-related part of an unavoidable process of modernization, indeed survival. On the other hand, everything modern is regarded with hostility as being an inter-related part of an alien Western civilization. One can lead to a destruction of the soul, the other to a destruction of the body.

During these inter-war years, the political leadership in other Muslim regions struggling to achieve independence was, in any case,

based on very much the same approach as in Turkey — whether it was the Arab nationalists based on, or originating from, Beirut or the Egyptian nationalists and Wafdists in Cairo or local nationalist movements elsewhere. Perhaps the most remarkable evidence of the strength of this concept of a nationalist, secular approach can be found in the sub-continent where most of the *ulama'* were supporting the Indian nationalist (and secular) movement and the Muslim League was concentrating its efforts until the late thirties on securing constitutional safeguards for Muslims within a nationalist Indian dispensation.

The first decisive break with a totally Western concept of state amongst the new Muslim intelligentsia and political leadership came in 1940 with the passing of the Pakistan resolution at Lahore. A nationalism transcending religion was now replaced by a nationalism based upon religion, expressed in the phrase "Muslim nationalism". Realization that there were two distinct nations in the sub-continent (to use Western terminology to express an essentially non-Western approach) can be found as early as Sayyid Ahmad Khan (d. 1898) and the same theme was taken up by Iqbal (d. 1938) particularly in his famous Presidential address to the 21st session of the Muslim League at Allahabad in 1930, even if he described the objective as a "Muslim India within India". There can be little doubt, however, that if he had lived long enough he would have found the 1940 Pakistan resolution entirely congenial to him.

The *ulama'* in the rest of the central Muslim world played relatively little role in political affairs during this inter-war period but from Abduh's writings a number of off-shoots developed each claiming to be his rightful heir — they ranged from secularists and nationalists to the Salafiyya movement of Rashid Rida (d. 1935), who turned more and more to Ibn Taymiyya and the Hanbali view in his later years. While Rashid Rida may be said to have been theoretical, the Muslim Brotherhood of Hassan al-Banna was an activist, political equivalent.

Yet for all the many variants of such thinking to be found throughout the Middle East, the fact remains that independence was

achieved in the years after 1946 by a Westernized or modernized class, although they may now be showing signs of faltering. Some idea of the fickle changing constitutional pattern since 1946 can be gained from summarizing it. At one extreme is Albania which, after being a republic (1924), then a monarchy (1928), became a Communist republic in 1946. Others (Egypt, Tunisia, Iraq, Libya, Yemen, Afghanistan and Iran) after varying periods as monarchies became republics though the degree of popular upheaval that effected this change varied from the mass-movement in Iran in 1978-79 to military coups d'état of varying intensity (Egypt, Libya, Afghanistan, Iraq and the Yemen Arab Republic) or swift civilian removal (Tunisia). Other states began their independence as republics (Mauretania, Jibuti, Indonesia, South Yemen, Somalia, Syria, Lebanon, Sudan and Algeria). In virtually the same category are those which began as "dominions" until they became regular republics such as Pakistan and Nigeria. Malaysia (Malaya) was also a dominion changing into a revolving elective monarchy with a parliamentary system. Others have remained monarchies (Morocco, Jordan, Kuwait and the other Gulf states besides Saudi Arabia). Finally, in 1960, a whole clutch of states from former French west and equatorial Africa became independent republics.

With regard to their internal structures, taking the monarchies first (apart from the unusual constitutional monarchy of Malaysia) there is the monarchy of Jordan which has shown a remarkable survival capacity and two which are more traditional monarchies, namely Morocco and Saudi Arabia. The case of Morocco is unusual in the Arab world as being the only main Arab state never to have been part of the Ottoman empire. The result is that it has a monarchic tradition, which begins in 788 soon after the end of the Umayyad period and has continued unbroken even during the French protectorate in the early part of this century. Indeed it was the short-lived exiling of the *sultan* (Mohammad V) which accelerated Moroccan independence in 1956. The monarch occupies a religious as well as a political position and there has been the usual monarch-*ulama'* equation (in Maliki terms). Indeed the cabinet which began in 1956 more like a contemporary model has become virtually a *diwan* of *viziers* in traditional form.

With Saudi Arabia, the monarchy also works in extremely close conjunction with the (Hanbali) *ulama'*. Indeed the religious element in the unification of what is now Saudi Arabia was vital. After the death of the founder of the dynasty, Abd al-Aziz b. Saud in 1953, the monarchy has shown itself through successive changes of monarch as being a collegiate-type royal family working by an internal process of *shura* which has interlocked with the *shura* of the leading *ulama'*. There has been a ready right of public access to members of the royal family and the monarch.

But it is important to remember that in these monarchies a new bureaucracy and administrative group is emerging (as it did in the Ottoman empire and Khedivial Egypt) educated in the West or in the increasing number of modern-type educational institutions in these countries themselves. All of these states are now in full contact with the outside world and the pace of economic modernization and social change has been greatly accelerated by the wealth from oil. They are in a transitional phase of profound significance and requiring statesmanship, even vision, of the very highest order, to successfully make the great transition in orderly fashion.

At the other extreme is the Communist republic of Albania. Little Muslim research has been done to understand how this Muslim-majority state could become — and remain — Communist, notwithstanding the fact that it parted company long ago with the Soviet Union, acrimoniously. Its relations with its neighbours, Communist and non-Communist, have been extremely cool, often hostile. If it is still Communist today, it may be against the wishes of its Muslim masses but it is kept so by a largely Muslim ruling elite.

In between these two extremes, are a variety of republics — "People's", "socialist", "Arab socialist", "Arab", "Arabo-Islamic socialist" "secular" and "Islamic". With a few exceptions (such as Turkey, Iran and Pakistan) which shall be considered next, the majority of these states are either one-party or one-man affairs. Tunisia is a civilian one-party state dominated by one man but the rest, after periods of constitutional or civilian rule, have become

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dominated by one party and/or the military, in terms often reminiscent of the *istila'* of the Third and Fourth Eras.

"People's Republic" is often used to denote a pro-Soviet foreign policy rather signify any great internal difference with the other states. Even where the other states are concerned, there are sometimes references in their constitutions to Islam or Islamic jurisprudence as "a source of legislation" or "the principle source of legislation" or a reference to Islam being the state religion but at the same time, sovereignty is expressed as belonging completely to the nation or the people. In ultimate results, the state and the government are sometimes indistinguishable and state control of much public (even personal) activity is less a thought-out pursuit of some economic philosophy and more the desire to establish full control over the internal affairs and life of the country. This is either controlled by a junta or an individual, depending on the strength of the personalities involved and the length of time that an individual has had to consolidate his position. In some cases, there has been an alternation of military and civilian rule or authoritarian and constitutional methods and sometimes a military ruler has donned civilian dress before setting up his own one-party state.

What seems clear is that government in most of the Muslim world is still an elitist or oligarchic affair with the *Umma* or community playing only a relatively minor role in most cases. It is easy enough to stir the Community and obtain its active support in wars of independence or for mass-demonstrations or mini-movements in the capital city or main towns, provided the protest is against a foreign power or ruler. But once a Muslim ruling group is installed, the age-old tradition of obedience to the government asserts itself and makes "public opinion" a weak voice and even weaker political force. This is only partly explicable in terms of illiteracy. There are, however, distinct signs that a qualitative change is slowly coming in which oppression and police state methods or the absence of the rule of law are becoming less and less acceptable as a stronger urban class emerges or as the rapid transmission of ideas from the outside world, particularly the rest of the Muslim world takes place. Underlying this is a groping for an enduring system in terms of the (Muslim)

personality of the states themselves. There are also increasing signs of a radicalization taking place, because of the continuation of the Palestine and Jerusalem problems.

Examined in the context of past Muslim state structures, it would appear that the old relationship of executive and *ulama'* has been largely overtaken by the decline in monarchies. But in many countries the president or *ra'is* has replaced the *sultan* in the old equation understood in traditional circles. There has been little *ulama'* objection to such a president possessing sweeping powers in the sphere of executive prerogative and legal activity in those fields which had been increasingly left to the executive over the centuries. Indeed, even in such closely-held preserves as *awqaf*, inheritance and family laws, there have been executive inroads. Where compulsory education has been introduced this has been of a contemporary type. Usually, however, the various republican governments have given the traditional clergy what are essentially only symbolic marks of prestige and deference.

In certain countries the *ulama'* do have a political tradition, of considerable strength and continuity. In Iran, at crucial stages, the *mujtahids* have been the symbols of popular protest and the mosques have remained the one sanctuary which the government did not dare enter or attempt to control. In Pakistan (and pre-Pakistan) there has been a record of *ulama'* activity which stretches back to at least Shaikh Ahmad Sirhindi (d. 1624) in reaction to Akbar's policies. This gained strength in the 19th century in the unsuccessful Mujahidin and 1857 movements. In arousing mass political consciousness, *ulama'* activity reached its peak in the (also unsuccessful) *khilafat* movement of the early 1920s. It has surfaced again in the various *ulama'*-dominated political parties which took an important part in the successful movement of 1977.

Nevertheless, many of the developments during the period from 1946 have a very unpredictable quality about them. Admittedly this is partly caused by the pressure of world events — political, military and economic — as they impinge upon the Muslim world or specific regions. But Muslim countries are likely to continue to be

tossed and buffeted by these winds of change and hurricanes of destruction as passive rather than active participants as long as they fail to solve their internal riddle of a valid and enduring system of leadership and government. Nor is this likely to be solved by reacting to events in an *ad hoc* and slightly bewildered fashion. In other words, there must be some understanding of what happened in Muslim history and what is now required. An understanding in which sound, consistent (and acceptable) practice can only flow from an integrated, acceptable theoretical concept.

Moving backward in time it is apparent that the solutions of the Fifth Era have irretrievably broken down, notwithstanding their success in the early period of the Ottoman and Mughal empires. That solution, it will be recalled, was basically an executive who recognized the supremacy of *shari'a* given effect to, by deferring to the *ulama'* in matters of *shari'a*-understanding i.e. *fiqh*. *Fiqh* itself being regarded as unchangeable after the closing of the gate of *ijtihad* and, therefore, not requiring any community participation for the approval of the results of *ijtihad*. Equally, it was an essential component of this Fifth Era solution, that each section of society kept to its appointed tasks. Thus the *ulama'* together with other "men of the pen" were to concentrate on education, administrative, judicial and intellectual functions, while the military confined themselves to their duties. Clearly this no longer applies to the military while the *ulama'* or a neo-traditional-type *ulama'* make attempts from time to time to capture political power.

The very "men of the pen" are now separated by a fissure into those of traditional background and those with Westernized or Communist or modern training. The Communists may have failed to strike any perceptible roots. The Westernized may have slowly contracted and been absorbed into a "modern" intelligentsia with an increasingly Muslim basis but the fact remains that there is a fissure between traditional and non-traditional approaches. Although the non-traditional intelligentsia are rediscovering socio-political Islam in an essential and enduring sense, they are unlikely ever again to revert to the traditional mould. Further, their control over the machinery of government and state shows no sign of abating. If

anything there are attempts by portions of the traditional *ulama'* to understand more about the workings of the modern age.

Nor are our political problems likely to be solved by going back to the Third Era of monarchical caliphates. This might have been successful in the main Umayyad period and some of the defects of the Umayyads may have been cured in the Early Abbasid period but, as we noted, there was an increasing decline, almost by its own logic, in constitutional and legal terms, after about 950 ending in the Sack of Baghdad in 1258. The calls for total obedience on the part of the Community did not lead to unity or stability but merely reduced the restraints on autocratic rule that come from fear of being held accountable. Nor was any constitutional method of deposition ever evolved, even at the theoretical level. Central-provincial relations were increasingly a question of force being legitimized on an *ex post facto* basis. Indeed, this sanction to *istila'* (forcible seizure) became extended to the capital itself and the very caliphate. Such legitimation of force inevitably corroded the very basis of moral authority.

The caliphate itself ceased to be a focal point of unity and there is much to ponder on, in the observation of the jurist al-Shahrastani (d. 1153) in his *K. al-Milal wa'l-Nihal* that: "Never was there an Islamic issue which brought about more bloodshed than the Caliphate."

This takes us back to the Second Era of the Rightly-directed Republican executive which ended in 661. Clearly much of the institutional framework of that time is no longer applicable to present conditions. The Rightly-directed rulers have to be understood in the context of the materials available today for building an institutional structure; materials which they would have assuredly utilized, if they were with us now. What is important is to extract the enduring lessons from that Rightly-directed Era. These have been considered earlier with particular reference to Umar b. al-Khattab. Equally relevant is the unbending refusal of Ali b. Abi Talib and his son to submit to wrongful government or usurpation — a far cry from the calls for total obedience of the middle period of Muslim history.

When we relate this early republicanism and the harmonious interaction of the executive and the community to our present age and our multiplicity of Muslim state structures, in an endeavour to ascertain where the decisive pattern for the future may lie, it seems that modern republicanism is the beginning of Muslim political wisdom and in harmony with the enduring Islamic spirit. The early awareness of the importance of accountability and "mutual" consultation seems to predicate that a second component of the valid contemporary Muslim solution will ultimately be democracy, the rule of law and constitutionalism. While a conditional allegiance to the democratic process carries within itself the seeds of its own destruction, a transitional process to the same end may be essential in certain situations.

Although there are plenty of manifestations of republicanism (from the first contemporary republic in 1923) the evidence about democracy is sparse. Malaysian democracy is a special case with its large Chinese and Indian populations and its elective monarchy. Other countries have been alternating between periods of military rule and constitutional democracy (Sudan, Nigeria and Indonesia) and no clear idea of what might constitute a suitable constitutional pattern of democracy is identifiable there at present. It is too early to determine whether Bangladesh has found an enduring political solution. Equally unclear for different reasons, is the likely trend in Iran. A referendum on the question of an Islamic republic goes a long way to making matters more predictable but still leaves unsettled the question of its democratic content. Nevertheless Iran has undergone a revolution in the truest sense of the word and which shows every sign of constituting a landmark in history.

Meanwhile two countries are worth comparing and considering because in both there has been a constant assertion of the Community in the political process over a long period of time, namely Turkey and Pakistan. In both there have been periods of military rule in the last thirty years, but in both it is remarkable how the military have regarded their role as a dominant political force as purely temporary. The former is a secular republic while the latter is an Islamic re-

public. These appellations require further analysis. With regard to being secular, other states come very close to the same result such as Indonesia, Nigeria and Tunisia. The goal of the PLO is a "secular, democratic Palestinian republic". Others, whatever may be the clauses in their constitutional documents about Islam, are barely distinguishable in this respect from the avowedly secular states. In any case, Turks themselves prefer the French word "*laïque*" considering that the word "secular" often carries an anti-religious or non-religious undertone. Laicism is non-clerical but gives, in their view, importance to religion in the personal sphere. Whether this essentially Christian way of looking at religion can be applied to a Muslim state is highly doubtful. In any case, as soon as the democratic process begins to function the state begins to reflect the true (Muslim) nature of the populace and Islam seems bound to force its way into the political process once more. This has become increasingly apparent in Turkey since 1950 when, for the first time in Muslim history, a government was changed as a result of a free general election.

Nevertheless there is a dilemma in this for Turkish democracy to solve where, for centuries, Islamic understanding in the Ottoman state was of an immutable, Hanafi Sunni pattern. They were not forced to consider questions of basic *ijtihad* in the manner which have always faced South Asian Muslims. Nor have the Turks had to reconcile the diversity of Muslim schools and sects on the scale that has been a permanent feature of the sub-continental scene. Consequently Ottoman Islamic understanding in a fixed *ulama'*-dominated mould confronted, in fixed lines, the new forces of modernization. There was little dialogue between even non-traditional Muslim and traditional Muslim attitudes, a striking evidence of which is the fact that the *shaikh al-Islam* prohibited *muftis* from giving *fatawa* on even the *Majalla*. Moreover the Turkish secularization process has led to a small but real Communist group which in turn has set off a highly nationalistic, racial, Turanic reaction of almost fascist quality. There is also an Islamic group (with an essentially traditional source of inspiration) which has little sympathy with a democratic dispensation. These are extremist minority fringes at present

but the threat to constitutional democracy should not be underestimated. The present major dialogue, judging from election returns, continues to be between the Republican People's Party and the Justice Party in which the sharp lines of demarcation between secularism and Islam, between Westernism and Islamic modernism, are being softened and eroded. The formal institutions of democracy, the rule of law and constitutionalism are present in Turkey but the spirit of dialogue and of give and take, essential to working a democratic process, are weak, particularly where religion is concerned.

On the other hand, in Pakistan, the major problem has been in setting up the formal institutions of democracy. In 1949 the Objectives Resolution set out in admirable fashion the nature of the Islamic state in Pakistan, symbolized in the subsequent declaration of Pakistan as the first Islamic republic in modern times, in 1956. It was the logical culmination to Shah Wali Allah, the Aligarh movement and the intellectual content of the Pakistan movement under Jinnah (d. 1948)—with its three-fold emphasis on the need for *ijtihad*, anti-clericalism and inter-sect reconciliation. Yet here there is a degree of friction between traditional and non-traditional approaches within an Islamic framework. An Islamic state meant one thing to Iqbal, to Jinnah and to Liaquat Ali Khan. But to some others an Islamic order has meant a reversion to the idealized, fixed state of affairs which it is claimed existed in 1707 before the British came. This line of thought is heir to those who wanted to restore the Mughal emperor in 1857 or revive a monarchical caliphate in the 1920s and who still have serious doubts about the new republican process in the Muslim world. In Pakistan, compared to Turkey, there is still a greater range of religious toleration and acceptance of religious dissent without resort to violence (despite occasional aberrations) which is an essential prerequisite for the working of democracy. Here, the failure lies in evolving the constitutional institutions—largely because of the problems of central-provincial and linguistic relations.

Yet, in both Turkey and Pakistan, there is a conditional quality about democracy. In Turkey free expression is permissible provided it does not question the secular nature of the state. In Pakistan

free expression is equally subject to a proviso, namely that it does not question the Islamic ideology of the state. In both cases this can lead to distorting the commitment to democracy besides providing a pretext for suppressing much essential healthy dissent and constructive criticism.

In both cases the enduring equation will only be found once the consensus-seeking process is allowed to naturally operate at the Community level.

Legal

During the Sixth Era, as was noted, a process of non-*shari'a* laws was initiated in the Egypt of the Khedive Muhammad Ali, in the Ottoman empire from the time of Sultan Mahmud II and in India and Algeria under the British and French respectively. There is a close parallelism in these changes which cuts across the distinction between independent and colonial areas. Some may hold that this shows that Western influence had triumphed in the independent regions as much as in the colonized areas. On the other hand, some may hold that this similarity in developments shows that certain forces were at work in the world which imposed its own requirements on all Muslim areas as soon as they came in contact with world currents.

It is significant that after 1925 in the increasing number of independent separate Muslim states which came into existence, this process has continued. As soon as their isolation was breached, the process has started and the use of revenues from oil for "development" has accelerated this change.

This change has usually begun with the military, then the medical facilities for the military, then civil medical facilities followed by education in military technical subjects (engineering, artillery etc.), then general civil education followed by the emergence of a new modern intelligentsia who increasingly man the apparatus of government and administration. Non-*shari'a* laws follow—commercial, penal, for relations between Muslims and non-Muslims, evidence, procedure, property (both urban and rural), contracts, the introduction of two systems of courts and the emergence of a new judiciary alongside or supplanting the traditional judiciary. Finally, changes

have taken place in the laws of charitable trusts and inheritance and even family laws. The precise order might vary from place to place but the ultimate pattern has been very similar.

Two aspects have obscured or hidden the significance of this trend. First certain states have only ended their isolation in the last two or three decades and the full working out of these changes is not yet discernible. At the other extreme, a reaction has developed with the increasing alienation of Muslim countries from the Western world. Western economic prescriptions have not solved internal Muslim problems of ending poverty, disease and ignorance. Indeed they seem to be increasingly failing in the Western world itself. More repellent to Muslims has been the decline in social and family values in the West and the degeneration of liberty to permissiveness on a nauseating scale and of individualism to selfishness.

In purely legal matters it would seem (as in constitutional questions) that the enduring answer will eventually be found when modernization within an Islamic framework, and based upon Islamic principles, finds expression.

Here again, the question of *ijtihad* becomes increasingly urgent. At a theoretical level it has been advocated by individual Muslim thinkers for a long time and their number has grown during the last century and a half. Iqbal is an outstanding recent example of this emphasis on *ijtihad* and a perception of its likely transference to a collective form in some sort of assembly. Equally significant it is basic *ijtihad* and not merely peripheral *ijtihad* that is being advocated. Sometimes such *ijtihad* is practised without being admitted as such which merely adds to our intellectual confusion.

As soon as we examine what is required for effective, acceptable and sound *ijtihad*, the inevitability of the Community's participation in the process becomes obvious. This was shown in the analysis of the Second Era and the legal evolution which continued into the first half of the Third Era described above. Such *ijtihad*, leading to an authoritative consensus (receiving general respect and voluntary obedience) can only function in a suitable set of institutions; institutions in which the Community plays its role as the decisive worldly

authority. Fragility can only be replaced by stability once such a type of Islamic democracy starts functioning.

The essential principles for such an Islamic democracy are well-expressed in Pakistan's 1949 Objectives Resolution. After first recognizing that Sovereignty over the entire universe belongs to Almighty God alone, the Resolution then correctly identifies the people as the delegated trustee of God's sovereignty in this world. This is pure and true Qur'anic understanding and takes its authenticity from the Qur'an's account of the creation of man and God creating man as His Vicegerent (*khalifa*) on earth. It is from this that the Islamic concept of the rights (and duties) of man and man's exalted position on earth are derived—over any individual, executive or oligarchy.

The word *khalifa* with its two plural forms (*khala'if* and *khulafa'*) occur in the Qur'an in eight places (2:30, 38:26, 6:160, 10:14, 10:73, 35:39, 7:68 and 27:26) while *istikhalafa* (to appoint a successor) with its derivatives occur in five places (24:55, 6:133, 11:57, 7:129 and 57:7). With regard to *khalifa* in the singular, this comes twice. In 38:26, God states that He has made David a *khalifa* on the earth, while in 2:30, God announces that He is placing Adam on earth as a *khalifa*. The reference in the latter case to mischief and the shedding of blood shows that the reference here is to Adam, symbolic ancestor of the human race. The solitary reference at 38:26 to an individual (David) was used in the Era of the monarchical caliphate to describe the executive but this must surely be placed against the fact that all other references to *khalifa* in the Qur'an are to Man—as God's vicegerent on earth. Similarly the references to *istikhalafa* are to "people" and not individuals.

Thus an Islamic state is based not merely upon the accountability of those in authority to the people but also the accountability of the individual citizen to God, so that together with his exalted position as God's *khalifa*, the individual citizen has onerous and inescapable duties and responsibilities—not the least in matters of running the state.

One can predicate that once the individual citizen is aware of his predominating role as God's vicegerent—over and above any other worldly authority or institution or group—the real regeneration and awakening of that Muslim state will have come about; an example that will surely be followed in the fullness of time by the others. The process must start with the intelligentsia—an Islamic and modern intelligentsia—and percolate through to the people at large. Then only will an Islamic state be valid and credible—a state best described as a *khilafa* of the people, republican and democratic, in a triumphant Eighth Era that will then come forth—for "Truly God will not change the condition of a people until they change themselves" (13:10).

KEMAL A. FARUKI
at Karachi

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622	Hijra from Mekka to Medina. Muslim calendar begins	3
632	d. of the Prophet (o. w. b. p.)	4,6

SECOND ERA : REPUBLICAN CALIPHATE (632-661)

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THIRD ERA : MONARCHICAL CALIPHATE (661-750-1258)

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713	d. Ibrahim Nakha'i in Kufa	20
715	Formation of official Umayyad judiciary	19
723	d. of last of "seven lawyers of Medina"	20
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778	d. Sufyan Thauri	21
789	Morocco and w. Algeria break away ..	12
795	d. Malik b. Anas	20
798	d. Abu Yusuf	15,20
800	E. Algeria, Tunisia and w. Libya break away	12
	Emergence of doctrine of <i>ijma'</i>	16
805	d. al-Shaybani	20
820	Turkestan, Yemen and Oman break away	12
	d. al-Shafi'i	20
855	d. Ahmad b. Hanbal	20
867-872	Afghanistan and Iran break away	12
868	E. Libya and Egypt break away	12
869	d. al-Bukhari, first of compilers of <i>Sihah Sitta</i>	20
870-883	Zanj revolts in Iraq	12
871	S. Pakistan breaks away	12
877	Tulunids in Syria	12
890	Transcaucasia breaks away	12
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949	Black Stone restored to Mekka by Fatimids	13
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998-1030	Mahmud Ghaznavi tenders <i>baya</i> to captive Abbasid caliph	14
1013	d. al-Baqillani	16
1055	Seljuks replace Buyids as de facto rulers in Baghdad	13

1058	d. al-Mawardi	17
1061-1106	Yusuf b. Tashufin tenders <i>baya</i> from Marra-kesh to captive Abbasid caliph	14
1111	d. al-Ghazzali	17
1153	d. al-Sharastani	57
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1211-36	Shams al-Din Iltutmish, Mu'izzi <i>sultan</i> at Delhi, tenders <i>baya</i> to Abbasid caliph	14
1258	Sack of Baghdad by Hulaku Khan. End of Abbasid caliphate	13,19,22

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1260	Mamluk <i>sultan</i> Baybars of Egypt defeats and finally halts Mongols under Hulaku Khan at Ayn Jalut in n. Palestine	13,19,22
1291	Expulsion of Crusaders completed with recovery of Acre	23
1300-1400	End of <i>ijtihad</i> in general and beginning of full <i>taqlid</i>	27
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1316	d. Khilji <i>sultan</i> Ala al-Din of Delhi	30
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1333	d. Ibn Jama'a	24
1406	d. Ibn Khaldun	25,42
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1453	Conquest of Istanbul by Ottoman <i>sultan</i> Mehmed II <i>Fatih</i>	23

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1967	Loss of Jerusalem	50,55
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1979	Iran proclaimed Islamic republic	58

GLOSSARY

(Pr-Persian; Tr-Turkish; Ur-Urdu; s-singular;
pl-plural; f-feminine)

<i>adab</i> (pl) <i>adab</i> آداب (ج)	more correct, sounder
culture, good-manners belles-lettres, humanities	<i>awqaf</i> pl of <i>waqf</i> q.v.
<i>ahadith</i> pl of <i>hadith</i> q.v.	<i>bay'a</i> بيعة
<i>ahkam</i> pl of <i>hukm</i> q.v.	oath of allegiance, investiture
<i>ahkam al-sultaniya</i> , al-	<i>bid'a</i> (pl) <i>bida'</i> بدعة (ج)
الاحكام السلطانية	innovation, invention, novelty, heresy
governmental principles, constitutional and administrative law	<i>dahri</i> (pl) <i>dahriyun</i> دهري (ج) دهريون
<i>ahl al-hall wa'l-'aqq</i>	atheist
اهل الحل والعقد	<i>dar al-khilafa</i> دار الخلافة
'people of loosening and binding', electors of the caliph	abode (capital) of the caliphate
<i>ahl al-kitab</i> اهل الكتاب	<i>darura</i> necessity ضرورة
"People of the Book", those religious groups which follow a revealed book	<i>diwan</i> (pl) <i>dawawin</i> ديوان (ج) دواوين
<i>ahl al-tasawwuf</i> اهل التصوف	chancellery, bureau, minister
"people of mysticism", mystics	<i>faqih</i> (pl) <i>fuqaha'</i> فقيه (ج) فقهاء
<i>a'imma</i> pl of <i>imam</i> q.v.	one considered competent in <i>fiqh</i> or the legal sciences
<i>akhlaq</i> اخلاق	<i>farman</i> (pl) <i>faramin</i> فرمان (ج) فرامین
character	decree, imperial edict
<i>albab</i> pl of <i>lubb</i> q.v.	<i>fatwa</i> (pl) <i>fatawa</i> فتوى (ج) فتاوى
<i>alim</i> عالم	decision or formal opinion given on a legal question
one possessing learning, knowledge, (s) of <i>ulama'</i> q.v.	<i>fiqh</i> فقه
<i>amir</i> (pl) <i>umara'</i> امير (ج) امراء	"comprehension", jurisprudence
commander, prince	<i>firman</i> (Pr, Tr, Ur) for <i>farman</i> q.v.
<i>amir al-mu'minin</i> امير المؤمنين	<i>fuqaha'</i> pl of <i>faqih</i> q.v.
commander of the faithful	<i>hadith</i> (pl) <i>ahadith</i> حديث (ج) احاديث
<i>amir al-umara'</i> امير الامراء	tradition, recorded narration of an action or saying of the Prophet
commander of commanders, commander-in-chief	<i>hakim</i> (pl) <i>hukkam</i> حاكم (ج) حكام
<i>aqwam</i> pl of <i>qawm</i> q.v.	
<i>aqwam</i> اقوام	

Glossary

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governor, judge, ruler	community or social life, association, assembly
<i>hakim</i> (pl) <i>hukuma'</i> حاكم (ج) حكما'	<i>ikhtiyar</i> اختيار
wise man, sage	choice or preference (for a given opinion)
<i>hila</i> (pl) <i>hiyal</i> حيلة (ج) حيل	<i>imam</i> (pl) <i>a'imma</i> امام (ج) ائمة
artifice, rick device, legal fiction	leader (of the Community), sometimes restricted to only spiritual or devotional duties
<i>hisba</i> حسبة	امامة
surveillance of markets and public morals	<i>imama</i> leadership as <i>imam</i> q. v.
<i>huquq shakhsiya</i> (Tr) <i>huquq-u shakhsiye</i> حقوق شخصية	<i>imara</i> امارة
personal rights	amirate, rulership, the institution of commander or ruler
<i>huquq siyasiya</i> (Tr) <i>huquq-u siyasiye</i> حقوق سياسية	<i>imarat al-istila'</i> امارة الاستيلاء
political rights	rule by forcible seizure
<i>ihya'</i> احيا'	اقتصاد
revivification, revival, revitalization	<i>iqtisad</i> economy, thrift, moderation
<i>ijma'</i> اجماع	<i>istikhalafa</i> استخلف
"coming together", agreeing upon, the consensus of acceptable <i>ijtihad</i> q.v. a generally accepted understanding of <i>sharia</i> q.v.	to appoint a successor
<i>ijtihad</i> اجتهاد	<i>istila'</i> استيلاء
exerting o's to the utmost to understand the <i>shari'a</i> q.v. through recognizable disciplines	seizure, capture, conquest, coup d'etat
<i>ijtihad al-ra'y</i> اجتهاد الرأى	اعتقاد
exertion to form a sound opinion on a <i>shari'a</i> matter	<i>i'tiqad</i> belief, conviction
<i>ijtihad fi l-madhab</i> اجتهاد في المذهب	<i>khalifa</i> (pl) <i>khulafa'</i> , <i>khala'if</i> خليفة - (ج) خلفاء - خلائف
<i>ijtihad</i> on general principles or cases within the framework of a particular school of law	vicegerent (of God), man, successor (to the temporal duties of the Prophet)
<i>ijtihad fil-masa'il</i> الاجتهاد في المسائل	<i>kharaj</i> خراج
<i>ijtihad</i> on specific questions	land tax
<i>ijtihad mutlaq</i> اجتهاد مطلق	<i>khilafa</i> خلافة
"absolute" <i>ijtihad</i> ", i.e. to understand the basic principles of <i>shari'a</i> exegesis	the institution or office of the caliph, a state which acknowledges the sovereignty of God
<i>ijtima'</i> اجتماع	<i>al-khulafa' al-rashidun</i> الخلفاء الراشدون
	the (first four) rightly-directed caliphs
	<i>khutba</i> (pl) <i>khutab</i> خطبة (ج) خطب

public address, sermon (part. on Friday in mosque)	kingship, dominion, monarchy
lubb (pl) albab لب (ج) الباب	muluk pl of malik q.v.
heart, intellect, understanding	mulukiya ملوكية
majalla مجلة	monarchic rule, monarchism
periodical, lawbook, code	muqaddima مقدمة
malik (pl) muluk, amlak	introduction, prolegomena
ملك (ج) ملوك — املاك	mustasfa مستصفى
king, monarch, possessor	chosen, quintessence
manahij pl of minhaj q.v.	mutlaq مطلق
maslaha (pl) masalih	absolute, general
مصلحة (ج) مصالح	muwahhid موحد
(public) interest, benefit, utility, welfare	one who adheres to Tawhid q.v.
maslaha mursala مصلحة مرسلة	nasiha (pl) nasaih نصيحة
(public) interest, welfare, benefit, utility	sincere advice, friendly admonition, friendly reminder
mazalim مظالم	nihla (pl) nihal نحلة
"complaints", prerogative appellate jurisdiction	sect, faith, creed
milla (pl) milal ملل (ج) ملل	qadi (pl) qudah قاضي
religious community, creed, denomination	judge, one capable of deciding or determining
minhaj (pl) manahij منهج	qanun (pl) qawanin قانون
open, plain, easy road; manner, procedure, curriculum	قانون (ج) قوانين
mufti (pl) -un مفتي (ج) -ون	"law" (usually) secular, statute
one qualified or considered competent to give a fatwa q.v.	qawm (pl) aqwam قوم
muhaddith (pl) -un محدث (ج) -ون	nation, race, people, fellow tribesmen
one considered competent in the study of hadith q.v., traditionist	qibla قبلة
muhtasib محتسب	the direction of prayer, i.e. of Mekka
one who exercises the functions of hisba q.v.	qist قسط
mujahid (pl) -un مجاهد (ج) -ون	equity, justice, fairness
one who strives, fighter in jihad (struggle for truth)	qiyas قياس
mujtahid (pl) -un مجتهد (ج) -ون	"measuring", analogy, comparison
one accepted as competent in ijtihad q.v.	quwwatlerim taqsimi
mulk ملك	(Tr for taqsim al-quwat q.v.)
	radd (pl) rudud رد (ج) ردود
	denial, reply, rejection, refutation
	ra'is (pl) ru'asa' رئيس (ج) رؤساء
	chief, president, one at the head
	ra's (pl) ru'us رأس (ج) رؤوس

"head", leader, summit	mutual consultation, the conclave which is to be consulted
rashid (pl) -un راشد (ج) -ون	siyasa shari'ya سياسة شرعية
rightly-guided	executive prerogative, government or policy based on shari'a q.v.
ra'y (pl) ara' رأي (ج) آراء	sultan (pl) salatin سلطان (ج) سلاطين
opinion, point of view	king, emperor
riba ربا	sultana سلطنة
usury, excess	sultanate, rule of kings or emperors
risala (pl) rasa'il رسالة (ج) رسائل	sunna سنة (ج) سنن
epistle, tract, treatise, letter	habitual practice, customary procedure, usage sanctioned by tradition. More specifically, the sayings and actions of the Prophet.
sahib (pl) ashab, sahaba صاحب (ج) اصحاب — صحابة	tahrir تحرير
"companion" of the Prophet, Muslim born before death of the Prophet	redaction, editing, precis, liberation
sahifa صحيفة	talaq طلاق
leaf (in a notebook), folio	divorce
salaf (pl) aslaf سلف (ج) اسلاف	tamhid تمهيد
the "preceding" generations, more specially the first three generations of Muslims — the companions, successors and successors to the successors	"smoothing", facilitation, easing, preparation, introduction
salaf al-salih, al- السلف الصالح	tanzim (pl) tanzimat تنظيم (ج) -ات
the pious preceding generations, i.e. the first three generations of Muslims	reorganization, readjustment, arrangement
shaikh (pl) shuyukh, ashyakh, mashyakha, masha'ikh, mashayikh, شيخ (ج) شيوخ — اشياخ — مشيخة — مشائخ — مشايخ	taqlid تقليد
elder, chief (of tribe), chief mufti, rector, senator, spiritual leader	"imitation", following blindly another's opinion, unquestioning adherence to the past interpretations of shari'a
shaikh al-Islam شيخ الاسلام	taqsim al-quwat تقسيم القوات
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shawka شوكة	tasawwuf تصوف
power, might, strength	
shura شورى	

public address, sermon (part. on Friday in mosque)	kingdom, dominion, monarchy
lubb (pl) albab لب (ج) الباب	muluk pl of malik q.v.
heart, intellect, understanding	mulukiya ملوكية
majalla مجلة	monarchic rule, monarchism
periodical, lawbook, code	muqaddima مقدمة
malik (pl) muluk, amlak	introduction, prolegomena
ملك (ج) ملوك - املاك	mustasfa مستصفى
king, monarch, possessor	chosen, quintessence
manahij pl of minhaj q.v.	mutlaq مطلق
maslaha (pl) masalih	absolute, general
مصلحة (ج) مصالح	muwahhid موحد
(public) interest, benefit, utility, welfare	one who adheres to Tawhid q.v.
maslaha mursala مصلحة - مرسله	nasiha (pl) nasaih نصيحة (ج) نصائح
(public) interest, welfare, benefit, utility	sincere advice, friendly admonition, friendly reminder
mazalim مظالم	nihla (pl) nihal نحلة (ج) نحل
"complaints", prerogative appellate jurisdiction	sect, faith, creed
milla (pl) milal ملل (ج) ملل	qadi (pl) qudah قاضي (ج) قضاة
religious community, creed, denomination	judge, one capable of deciding or determining
minhaj (pl) manahij مناهج (ج) مناهج	qanun (pl) qawanin قانون (ج) قوانين
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mysticism		meshveret)	اصول المشورة
tashkhis	تشخيص	principles of consultation	
identification		vezir	
tatbiq	تطبيق	Tr for wazir q.v.	
accommodation, harmonization		walaya	ولاية
ulama'	علماء	vested authority (of caliph, guardian)	
the general body of those learned in Islamic disciplines, more particularly the theologians (pl of alim q.v.)		waqf (pl) awqaf	وقف (ج) اوقاف
ulu'l-amr	أولى الأمر	pious foundation, charitable trust, mortmain	
"those in authority"		wazir (pl) wuzara'	وزير (ج) وزراء
umara' pl of amir q.v.		minister	
umma (pl) umam	أمة (ج) أمم	wilaya	ولاية
community		competence, jurisdiction	
usul al-fiqh	اصول الفقه	yeni-cheri (Tr) new troops	
principles of law, jurisprudence		zakat (pl) zakan, zakawat	زكاة (ج) زكا
usul al-mashwara (Tr usul-u		alms-tax	زكوات

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